SUPREME COURT OF THE UNITED STATES.

No. 324.

ARCHIBALD YOUNG AND ELBERT H. VAN KLEECK, APPELLANTS,

vs.

JOSHUA CUSHING, SARAH P. CUSHING, AND ORVILLE N. ADAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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a United States of America to Joshua Cushing, Sarah P. Cushing, and Orville N. Adams:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein Archibald Young and Elbert H. Van Kleck are appellants, and you are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Thomas Drummond, judge of the district court of the United States, north. district of Illinois, this twenty-eighth day of July, in the year of our Lord eighteen hundred and sixty-five, and of our independence the 90th.

THOMAS DRUMMOND.

We hereby admit service of a copy of the within citation, this 28th day of July, 1865.

WALKER & DEXTER,
per GEO. WM. BROWN,
Att'ys for pl'ffs.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, in chancery sitting, on Wednesday, the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

WM. H. BRADLEY, *Clerk.*

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and ORVILLE N. ADAMS. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-one, came
2 Archibald Young and Elbert H. Van Kleeck, complainants, by E. S. Smith, esq., their solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago in said district, their bill of complaint against Joshua Cushing, Sarah P. Cushing, Orville N. Adams, and Lycurgus Edgerton, defendants, and also at the same time filed their bond for costs in said entitled cause; which said bond and said bill, with exhibits thereto attached, are as follows, to wit:

Circuit court.—Term A. D. 1861.

ARCHBOLD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, ORVILLE N. ADAMS, and Lycurgus Edgerton. } In chancery.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against my property for any costs taxed against. Dated this 17th day of July, A. D.
3 1861.

E. S. SMITH.

Indorsed: Filed this 17th day of July, A. D. 1861.

WM. H. BRADLEY, *Clerk.*

4 United States of America, circuit court of the United States for the seventh circuit and northern district of Illinois, sitting in chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

To the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois:

Archibald Young and Elbert H. Van Kleeck, of New York city, who are citizens of the State of New York, bring this their bill of complaint against Joshua Cushing, Sarah P. Cushing, and Orville N. Adams, of La Salle, who are citizens of the State of Illinois, and residing in said district aforesaid, and Lycurgus Edgerton, of New York, who is a citizen of the State of New York, and therefore your orators complain and say that on or about the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, the said Joshua Cushing being indebted to the said Orville N. Adams in the sum of sixteen hundred dollars, in consideration thereof, on the day and year aforesaid, made, executed, and delivered to the said Adams a certain promissory note for the said sum of money, bearing date the day and year last aforesaid, and made payable to the order of the said Adams one year from the date thereof, for value received, as by the said note, ready to be produced by your orators as this court shall direct, will more fully appear.

5 And the said Joshua Cushing, to secure the payment of the sum of money mentioned in said note according to the tenor and effect thereof, did at the same time execute under his hand and seal and deliver to the said Orville N. Adams a deed of mortgage, commonly called a trust deed, bearing even date with said note, and conditioned for the payment of the said sum of sixteen hundred dollars, according to the tenor and effect of said note, by which deed the said Joshua Cushing mortgaged and conveyed unto said Orville N. Adams

in fee certain lands and real estate situate in the county of La Salle and State of Illinois, a description of which, taken from said deed of mortgage, is contained in the copy of said deed hereunto annexed, marked "Exhibit A," to which your orators refer, and pray may be taken as a part of this their bill of complaint, which deed was duly acknowledged, and was afterwards recorded in the office of the register of deeds, &c., in and for the county of La Salle and State of Illinois, on the seventeenth day of January, eighteen hundred and fifty-six, at fifteen minutes after eleven o' clock in the forenoon, in book 46 of deeds, &c., on pages 233 and 234, as by the said deed of mortgage and the certificate of acknowledgment and of the recording aforesaid indorsed thereon, and ready to be produced as this court shall direct, will more fully appear.

And your orators further show unto your honors that on or about the nineteenth day of May, one thousand eight hundred and
6 fifty-six, the said note and deed of mortgage were duly assigned by the said Adams to your orators as collateral security for the payment of a certain promissory note made and delivered by the said Orville N. Adams and brother to said Archibald Young and Elbert H. Van Kleeck, of New York, for the sum of one thousand eight hundred and twenty-eight dollars and ninety-seven cents, payable (with exchange on New York) six months after date, at the banking-house of Herman Baldwin, at La Salle, Illinois, and bearing date May the twentieth, one thousand eight hundred and fifty-six.

And your orators further show that, on or about the nineteenth day of May, one thousand eight hundred and fifty-six, the said Adams, in pursuance of said assignment, deposited said note made by said Cushing, and the deed of mortgage securing the same, together with some smaller notes, into the hands of one James Strain, of La Salle, as collateral security as aforesaid for the payment of said note made and delivered by said Adams and brother to your orators, as will more fully appear by the receipt writing of said Strain, a copy of which is hereunto annexed, marked "Exhibit B," to which your orators refer for greater certainty, and pray may be taken as a part of this their bill of complaint.

And your orators further show that they still own and hold
7 the said note of Adams and brother for the said sum of one thousand eight hundred and twenty-eight dollars and ninety-seven cents; that they paid a valuable consideration for said note, and that the whole of the said sum, with interest from the twentieth day of November, one thousand eight hundred and fifty-six, together with exchange on New York, at to wit, six per cent., is now due and payable to your orators, (with the exception of seventy-three dollars and sixty-nine cents for which the said note of Adams and brother should be credited,) and that the said Adams and brother refuse to pay the same, although often requested so to do; and that your orators still hold, as collateral security as aforesaid, the said note of Joshua Cushing, and the deed of mortgage securing the same, and that there is due, as your orators believe, on the last-mentioned note, the sum of sixteen hundred dollars, with interest from the seventh day of October,

one thousand eight hundred and fifty-six, and that the said Joshua Cushing, although often requested, refuses to pay the same, and that no proceedings at law have been had to recover the debt secured by the last, mentioned note and mortgage, or any part thereof.

And your orators further show unto your honors, and state the same on information and belief, that the said Sarah P. Cushing is the wife of the said defendant Joshua Cushing, and that she joined her said husband in the execution of said deed of mortgage, and
8 that the said Orville N. Adams and Lycurgus Edgerton have or claim some interest in the said premises so mortgaged as aforesaid, or in some part thereof, as purchasers, mortgagees, or otherwise, which interests, if any, have accrued subsequently to the lien of said deed of mortgage of your orators and are subject thereto.

And your orators further show unto your honors that, as they are informed and believe, the said Orville N. Adams, on or about the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-six, after he had assigned said note and deed of mortgage securing the same to your orators, procured from said Cushing and wife an absolute deed of conveyance of said mortgaged premises to himself, and that said Joshua Cushing and wife thereupon conveyed, or pretended to convey and release all right, title, and interest in and to said mortgaged premises to said Adams, and that said Adams thereafter, to wit, on the twenty-fifth day of August, one thousand eight hundred and fifty-seven, allowed said premises to be sold at a sale made by the United States marshal by virtue of an execution issued against the property of said Adams and brother at the instance of said Lycurgus Edgerton, who claimed to be the judgment creditor of said Adams and brother, and that one James M. Walker bid in said property at said sale as the agent and trustee of said Edgerton, and that said property has been otherwise incumbered, all of which your orators believe, and charge the
9 the fact to be, was done by the conspiracy and collusion of said defendants Adams, Cushing, Edgerton, and their agents, in order to supersede and defeat the rights and interest which your orators have in said premises by virtue of said note and deed of mortgage, and the aforesaid assignment thereof, of which said defendants had notice, and well knew the rights of your orators.

And your orators further show unto your honors that, at the time of the assignment of the said deed of mortgage and note as aforesaid, the said Adams, being the trustee named in said deed, agreed to proceed to sell such mortgaged premises, and apply the proceeds of such sale to the payment of the aforesaid note of Adams and brother, in case the same should not be paid at maturity, within thirty days thereafter, if requested by your orators, as by reference to said receipt in writing of said Strain, a copy of which is hereunto attached, will more fully appear. That your orators have frequently applied to said Adams, the mortgagee and trustee in said deed of mortgage named, to sell said premises under said deed of mortgage, and by virtue of the said trust contained therein, according to his said agree-

ment with your orators, or in default thereof to pay your orators the principal and interest due on said mortgage debt.

10 And your orators well hoped that the said defendants, Orville N. Adams and Joshua Cushing, would have complied with such reasonable requests of your orators, as they ought in justice and equity to have done.

But now so it is, may it please your honors, that the said Orville N. Adams and Joshua Cushing, combining and confederating together and with divers persons at present unknown to your orators, whose names, when discovered, your orators pray they may be at liberty to insert herein, with apt words to charge them, as parties defendants hereto, and contriving how to wrong and injure your orators in the premises, they, the said Adams and said Joshua Cushing, absolutely refuse, and each of them absolutely refuses, to comply with such reasonable requests, and for reason whereof said defendants set up a variety of unfounded pretences. Your orators therefore ask the aid of this honorable court in the premises, and that the said defendants may appear before this honorable court and answer this, your orators' bill, according to the rules and practice of said court, and that they may, if they can, show why your orators should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth

11 as by the note hereunder written they are respectively required to answer, without oath, your orators hereby expressly waiving, pursuant to the statute, the necessity of the answer of said defendants being put in under the oaths of said defendants or the oath of either of them.

And that the said Joshua Cushing, Orville N. Adams, and Lycurgus Edgerton may discover, and in manner aforesaid set forth, whether there is or are any other, and what, incumbrance or incumbrances upon or affecting said mortgaged premises; and if so, in whom the same is or are vested, and whether the same is or are not subsequent to your orators' said security and mortgage, or how otherwise. And that an account may be taken by and under the decree and direction of this honorable court of what is due and owing to your orators for principal and interest on their said Cushing note and deed of mortgage, and that the usual decree may be made for the sale of said mortgaged premises and for the payment of the amount due to your orators for principal and interest upon the said Cushing note and deed of mortgage, and their costs of this suit; and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens by judgment or decree

11½ upon the mortgaged premises subsequent to said deed of mortgage of your orators, or any liens or claims thereon, by or under any such subsequent judgment or decree, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all right and equity of redemption in said mortgaged premises.

And that your orators may have such other and further relief in the premises as the nature of their case may require, and as to your honors may seem proper and agreeable to equity.

And may it please your honors to grant unto your orators the people's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Joshua Cushing, Sarah P. Cushing, Orville N. Adams, and Lycurgus Edgerton, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orators shall ever pray, &c.

ARCHIBALD YOUNG.
ELBERT H. VAN KLEECK,
Per E. R. WOODRUFF.
E. S. SMITH,
Solicitor for Complainants.

12 UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

On this seventeenth day of July, one thousand eight hundred and sixty-one, personally came before me E. R. Woodruff, who being duly sworn, saith that he is the agent of the complainants in this behalf, and that said complainants are not within said State to his knowledge; that he has read the foregoing bill of complaint, and knows the contents thereof, and believes that the same is true of his own knowledge, except as to the matters and things therein stated upon the information and belief of the complainants, and as to those matters he believes it to be true.

E. R. WOODRUFF.

Sworn and subscribed before me this 17th day of July, 1861.
[SEAL.] MILES ALMY, *Notary Public.*

Exhibit A.

This indenture, made this seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, between Joshua Cushing and Sarah P. Cushing, his wife, of the county of La Salle, and the State of Illinois, parties of the first part, and Orville N. Adams, of the county of La Salle, in the State of Illinois, party of the second part, witnesseth, that the said parties of the first part, for and consideration of the sum of sixteen hundred dollars, paid
13 by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell to said party of the second part, the following described tracts or parcels of land situated in the county of La Salle, and the State of Illinois, viz: the west half of the southwest quarter of the southwest

quarter of section No. twenty-three, and the west half of the east half of the southwest quarter of section No. twenty three. Also the following, in section No. twenty-two, commencing on the south line of section No. twenty-two, town. thirty-three, range one east, at a point forty-six rods east of the middle line of said section; thence west on said line thirty-three rods; thence due north to the Illinois river; thence an easterly course along said river, to a point on said river due north from the place of beginning; thence due south to the place of beginning, containing eight acres, more or less; all of the above-described tracts being in T. 33 north, range No. 1 E., 3d P. M., together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises above described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the
14 premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, they will forever warrant and defend. In trust, nevertheless for the uses and purposes hereinafter mentioned, to wit:

Whereas the said Joshua Cushing is indebted to Orville N. Adams in the sum of sixteen hundred dollars, made payable one year from date hereof by a promissory note bearing even date herewith given by the said Joshua Cushing to the said Orville N. Adams; if the said Joshua Cushing shall pay the said note when the same shall become due, then this deed given by the said parties of the first part to the said party of the second part in trust for the payment of said sum, to be void; otherwise the said parties of the first part do constitute and appoint the said party of the second part trustee, with full and ample power to sell the above-described tracts and parcels of land at public sale, by first giving notice ten days in some paper published in the town of La Salle. The money derived from said sale to be applied by the said trustee, first, to the payment of all costs
15 accruing by said sale; secondly, to the payment of the said above-mentioned note; and, thirdly, the residue, if any, to be paid to the said Joshua Cushing, hereby ratifying and confirming all such agreements, conveyances, and deeds as shall be made in the premises by their said trustee, the same as if they were personally present and did the same.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

(Signed) JOSHUA CUSHING. [SEAL.]
(Signed) SARAH P. CUSHING. [SEAL.]

(Acknowledgment:)

Exhibit D.

Rec'd May 19th, 1856, of O. N. Adams & Brother, the following notes, to be held by me as collateral security for the payment of a note made by the said O. N. Adams & Brother, dated New York, May 20th, 1856, payable six months after date, at the banking-house of Herman Baldwin, La Salle, Ill., to Archibald Young and Van Kleeck, of N. Y., for the sum of one thousand eight hundred and twenty-eight and $\frac{97}{100}$ dollars, with exchange on New York, to wit, one note on Joshua Cushing for $1,600, dated Oct. 7th, 1855, payable to O. N. Adams one year after date; one note on James and Levi Call, dated March 1st, 1856, payable 6 mos. after date to O. N. Adams & Brother for $87 35; one note payable to O. N. Adams & Bro., made by
16 Henry Pearson, Henry Cress, and J. C. Pearson, dated Ap'l 14th, 1856, payable September 1st, 1856, for $22 00; one note made by Henry Pearson and Henry Cress to the same, for $58 33, bearing date Ap. 15, 1856, payable Nov. 1st, 1856; one note made by James McHogh to the same parties for $11 00, dated March 27, 1856, and payable 6 mos. after date, with 10 per cent.; a note made by E. S. N. McCaughy to same, dated Feb'y 1st, 1856, payable 1 day after date, with 10 pr. cent., for $30 00; a note made by Joseph Harmon and Abram Hess to same parties, dated March 12th, 1856, payable Sept. 1st, 1856, for $84 83, with 10 p'r cent. The said note on Joshua Cushing is secured by a deed of trust on certain real estate therein described, which is also hereby assigned for the same purpose. The said Adams, being the trustee named in said of trust, hereby agrees to proceed to sell said property and apply the proceeds of such sale to the payment of his aforesaid note, in case he shall not pay the same at maturity, within thirty days thereafter if requested by the said Young & Van Kleeck, said securities being placed in my hands by the parties mutually, for the purpose aforesaid.

(Signed) JAMES STRAIN,
Agent for the said Adams & Bro. and said Young & Van Kleeck.

Indorsed: Filed July 17, 1861.

WM. H. BRADLEY, *Cl'k.*

17 On the same day, to wit, the seventeenth day of July, A. D. 1861, a writ of subpœna issued out of said clerk's office against said defendants in said entitled cause, which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to Joshua Cushing, Sarah P. Cushing, Orville N. Adams, and Lycurgus Edgerton, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of August next, to answer the bill of complaint of Archibald Young and Elbert H. Van Kleeck, this day filed

in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

18 Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the eighty-sixth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.—The abovenamed defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Executed the within by reading to and in the hearing and presence of the within-named Lycurgus Edgerton, and also by delivering to him a true copy thereof, this 23d day of July, 1861. I also executed the within writ by reading to and in the hearing and presence of the within-named Orville N. Adams, and also delivered a true copy of the within to him this 29th day of July, A. D. 1861.

J. R. JONES,

U. S. Marshal, Northern District of Illinois,

19 By PARNELL MUNSON, *Deputy.*

Joshua Cushing and Sarah P. Cushing not served, they not being found in my district; they live at Cairo, I am informed.

P. MUNSON.

Indorsed: Filed Aug. 2d, A. D. 1861.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 9th day of August, A. D. 1861, an alias writ of subpœna issued out of said clerk's office against said defendants in said entitled cause, which said alias writ, together with the return of the marshal thereon, is in words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to Joshua Cushing, Sarah P. Cushing, Orville N. Adams, and Lycurgus Edgerton, greeting:

We command you again, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of September next, to answer the bill of complaint of Archibald Young and Elbert H. Van Kleeck,

20 filed July 17th, A. D. 1861, in the clerk's office of said court, in said city of Chicago, then and there to receive and abide

by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this ninth day of August, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the eighty-sixth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.—The abovenamed defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I hereby appoint E. H. Finch my special deputy, to execute this writ, this 26th day of August, 1861.

D. L. PHILLIPS, *U. S. Marshal.*

21 Served the within writ Aug. 27th, 1861, upon the within-named Joshua Cushing, by delivering to him a copy of the same, and upon the within-named Sarah P. Cushing, (she being from home,) by delivering a copy of the same at her place of residence to Joshua Cushing, her husband.

D. L. PHILLIPS,
U. S. Marshal for the Southern District,
Per E. H. FINCH.

Indorsed: Filed August 30th, A. D. 1861.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 31st day of August, A. D. 1861, came said defendant Lycurgus Edgerton, by his solicitor, and filed in said clerk's office his motion to dismiss the bill as to him, which said motion is in the words and figures following, to wit:

22 Circuit court of the United States for the northern district of Illinois, of the September term, A. D. 1861.

ARCHIBALD YOUNG and ELBERT H. VAN KLEEK } *vs.* JOSHUA CUSHING, SARAH P. CUSHING, LYCURGUS Edgerton, and Orville N. Adams. } In chancery.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

And now comes the said defendant Lycurgus Edgerton, by J. M. Walker, his solicitor, and moves the court to dismiss the said bill of

complaint as against him, the said Edgerton, for want of jurisdiction, the said defendant Edgerton being a citizen resident of the same State as the complainants, as appears by said bill of complaint.

J. M. WALKER,
Sol'r for Def't Edgerton.

Indorsed: Filed Aug. 31, 1861.

WM. H. BRADLEY, *Cl'k.*

23 On this day, to wit, the thirty-first day of August, A. D. 1861, came said defendant Adams, and filed in said clerk's office his appearance in said cause, which is as follows:

In the circuit court of the United States for the northern district of Illinois, of the September term, A. D. 1861.

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, LYCURGUS Edgerton, and Orville N. Adams. } In chancery.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

And now comes the said defendant Orville N. Adams, by his counsel, John Van Arman, and enters his appearance in the above-entitled suit.

JOHN VAN ARMAN,
Counsel for Def't Adams.

Indorsed: Filed Aug. 31, 1861.

WM. H. BRADLEY, *Cl'k.*

24 On this day, to wit, the seventh day of October, A. D. 1861, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, ORVILLE N. Adams, and Lycurgus Edgerton. } Chancery.

Now come the the complainants, by E. S. Smith, their solicitor, and on motion, leave is given them to amend the bill of complaint herein.

On this day, to wit, the sixth day of October, A. D. 1862, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, ORVILLE N. Adams, and Lycurgus Edgerton. } Chancery.

Now come the complainants, by E. S. Smith, esq., their solicitor,

and it appearing satisfactorily to the court that the defendants,
25 Joshua Cushing, Sarah P. Cushing, and Orville N. Adams had been regularly served with process, but had failed to enter their appearance herein, except Orville N. Adams, and had also failed to answer the complainants' bill of complaint, agreeably to the rules and practice of this court, and they being now each three times solemnly called, come not, but make default, it is thereupon considered by the court, on motion, that the defaults of the defendants, Joshua Cushing, Sarah P. Cushing, and Orville N. Adams be entered, and that the bill and the matters and things therein stated and charged be taken as confessed, as to them.

On this day, to wit, the 18th day of November, A. D. 1862, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, ORVILLE N. Adams and Lycurgus Edgerton. } Chancery.

Now come the complainants, by their solicitors, and say they
26 will no further prosecute their bill against the defendant, Lycurgus Edgerton, but dismiss the same. It is thereupon considered by the court that the bill be dismissed as to him.

And on motion of complainants, by their solicitors, it is ordered that it be referred to J. Tilden Moulton, esq., master in chancery of this court, to compute the amount due the complainants herein, and to report the same to the court, together with the proof of the facts alleged.

On this day, to wit, the 20th day of November, A. D. 1862, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and Orville N. Adams, impl'd with Lycurgus Edgerton. } Chancery.

Now come the complainants, by their solicitors, and file the report of the master of the amount due the complainants herein.

27 The report of the master filed in this cause, is in the words figures following, to wit:

Circuit court of the United States of America, northern district of Illinois, in chancery.

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING *et al.*

In pursuance of a decretal order of said court made in the above-entitled cause, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and sixty-two, wherein and whereby among other things it was referred to the master in chancery of the said court to compute the said amount due on the note and deed of mortgage or trust deed mentioned in the bill of complaint in the said cause, and also to report the facts in the said cause, as appears by the testimony taken in the said cause and filed in the said court—

J. Tilden Moulton, the master in chancery of the said court, hereby reports that on the nineteenth day of November, in the year aforesaid, I was attended by E. S. Smith, esq., as solicitor for the complainants, who produced to me the note and mortgage mentioned in said bill.

28 That I have examined the said bill, note, and mortgage, and also the testimony taken in the said cause, and do find that at the time of the filing of the said bill the said note therein mentioned, bearing date the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, signed by Joshua Cushing, one of the defendants in the said cause, payable to the order of Orville N. Adams, also one of the defendants in the said cause, one year from the date thereof, for value received, was wholly due and unpaid, being for the sum of sixteen hundred dollars, ($1,600,) with interest at the rate of ten per cent. per annum after due, and that the interest thereon at the rate aforesaid, from the seventh day of October, 1856, to the date of this report, being six years, one month, and twelve days, amounts to the sum of nine hundred seventy-eight dollars and sixty-six cents, ($978 66,) which sum, added to the principal sum above mentioned, amounts to the sum of twenty-five hundred seventy-eight dollars and sixty-six cents, ($2,578 66,) due to the complainant for principal and interest on the said note, according to the term of said note described in the said bill; that I find by the testimony of E. Follett Bull, taken in this cause on the twelfth day of September, 1862, that the note and security given by defendant, Joshua Cushing, had been assigned and transferred

29 to the complainants on the nineteenth day of May, 1856; that the note was indorsed by Orville N. Adams; that the same was so transferred by said Orville N. Adams as part security for a note of himself and brother for a larger amount; that the same note and security of said Cushing from that date remained in the hands of said witness, as the attorney of the complainants. I find from said testimony that there had not been any sale of the mortgaged premises described in the bill of complaint as a mortgage, and no direction

from the complainants to the witness, or James Strain, directing them to sell or to enforce the execution for some time, and that Orville N. Adams, the defendant, about the time the debt against Adams and brother matured, became the purchaser of Cushing's interest from Cushing, his interest in the property described in the trust deed.

I also find the note for which this note and security was taken as part security has not been paid ; that the said debt, on the 17th day of May, 1856, was eighteen hundred and twenty-eight dollars ninety-seven cents, due six months after date. I also find from the evidence, and do report, that the note and trust deed described in the bill of complaint is produced in evidence by the complainants, from which it appears that Cushing and wife, on the 7 day of October,
30 1855, duly executed and acknowledged said deed of trust to secure to said Orville N. Adams said sum of sixteen hundred dollars, with ten per cent. interest thereon, after due, as described in said bill of complaint ; that from the certificate of the clerk said deed of trust was recorded in the recorder's office in the county of La Salle, in the State of Illinois, on 17 day of January, 1856, in book 46, pages 233 and 234.

I do further report that said deed of trust, by its terms and conditions, granted, bargained, and sold the lands therein described to said Orville N. Adams to secure said sum of money, as stated in said bill of complaint, with power to sell the property, in case of default, at public auction, and to apply the proceeds in payment of the debt thereby secured.

I do further find from the evidence, and report, that said note and security was transferred by said Orville N. Adams to the complainants, and that the complainants are the owners of the said security and property in the said note and trust deed, and that they are entitled to a decree against said Cushing for the sum of two thousand five hundred and seventy-eight dollars and sixty-six cents, and for a sale of the real estate described in the said trust deed in
31 payment thereof.

All which is respectfully submitted.

J. T. MOULTON, *Master in Chancery,*
United States Circuit Court, Northern District of Illinois.

November 19, 1862.

Indorsed : Filed Nov. 20, 1862.

W. H. BRADLEY, *Cl'k.*

32 On this day, to wit, the 22d day of November, A. D. 1862, come said defendants, by their solicitors, and filed in said clerk's office the motion in said entitled cause ; which said motion is as follows :

United States circuit court.

ARCHIBALD YOUNG and ELBERT H. VAN Kleeck, compl'ts,
vs.
JOSHUA CUSHING, SARAH P. CUSHING, Orville N. Adams, and Lycurgus Edgerton, def'ts.
} Bill to foreclose mortgage.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Now comes the said defendant, Orville N. Adams and Joshua Cushing, by Walker & Dexter, his attorneys, and moves the court to set aside the decree entered in the above-entitled cause on the twentieth day of November, A. D. 1862, and to set aside any defaults entered in said cause against these defendants, and for leave to def'ts Adams and Cushing to answer.

DEXTER & WALKER,
Sol'rs for De'fts Adams and Cushing.

Indorsed: Filed Nov. 22d, 1862.

WM. H. BRADLEY, *Cl'k.*

33 On this day, to wit, the second day of March, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN Kleeck
vs.
JOSHUA CUSHING, SARAH P. CUSHING, Orville N. Adams, and Lycurgus Edgerton.
} Chancery.

Now come the parties, by their solicitors, and on motion and by consent, the default entered herein on the sixth day of October, eighteen hundred and sixty-two, is set aside and vacated, and leave given to the complainants to amend their bill of complaint.

On this day, to wit, the sixth day of May, A. D. 1863, come said complainants, by their solicitor, and filed in said clerk's office their amended bill in said entitled cause; which said amended bill is in the words and figures following, to wit:

34 United States of America, circuit court of the United States for the seventh circuit and northern district of Illinois, sitting in chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

To the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois:

Archibald Young and Elbert H. Van Kleeck, of New York city, who are citizens of the State of New York, bring this their bill of complaint against Joshua Cushing, Sarah P. Cushing, and Orville N. Adams, of La Salle, who are citizens of the State of Illinois, and re-

siding in said district, and therefore your orators complain and say that on or about the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, the said Joshua Cushing being indebted to the said Orville N. Adams in the sum of sixteen hundred dollars, executed and delivered to the said Adams a certain promissory note for the said sum of money, bearing date the day and year last aforesaid, and made payable to the said Orville N. Adams, or bearer, one year from the date thereof. for value received, as by the said note, ready to be produced by your orators as this court shall direct, will more fully appear; and the said Joshua Cushing, to
35 secure the payment of the sum of money mentioned in said note according to the tenor and effect thereof, did at the same time execute under his hand and seal and deliver to said Orville N. Adams a deed commonly called a trust deed, bearing even date with said note, and conditioned for the payment of the said sum of sixteen hundred dollars, according to the tenor and effect of the said note, by which said Joshua Cushing conveyed unto the said Orville N. Adams in fee certain lands and real estate situate in the county of La Salle, and State of Illinois, a description of which, taken from said deed, is contained in the copy of said deed hereunto annexed, marked Exhibit A, to which your orators refer, and pray may be taken as a part of this their bill of complaint, which deed was duly acknowledged and was afterwards recorded in the office of the register of deeds, &c., in and for the county of La Salle, and State of Illinois, on the seventeenth day of January, eighteen hundred and fifty-six, at 15 minutes after 11 o'clock in the forenoon, in book 46 of deeds, &c., on pages 233 and 234, as by the said deed and the certificate of acknowledgment and of the recording aforesaid indorsed thereon and ready to be produced as this court shall direct, will more fully appear.

And your orators further show unto your honors that on or about the nineteenth day of May, one thousand eight hundred and fifty-six, the said note and deed were duly assigned by the said Adams
36 to your orators as collateral security for the payment of a certain promissory note made and delivered by the said Orville N. Adams and his brother, under the name and firm of Adams & Brother, to said Archibald Young and Elbert H. Van Kleeck, of New York, for the sum of one thousand eight hundred and twenty-eight dollars and ninety-seven cents, payable (with exchange on New York) six months after date, at the banking-house of Herman Baldwin, at La Salle, Illinois, and bearing date May the twentieth, one thousand eight hundred and fifty-six.

And your orators further show that on or about the nineteenth day of May, one thousand eight hundred and fifty-six, the said Adams in pursuance of said assignment, deposited said note made by said Cushing and the deed securing the same, together with some smaller notes, into the hands of one James Strain, of La Salle, as collateral security as aforesaid for the payment of said note made and delivered by said Adams & Brother to your orators, as will more fully appear by the receipt in writing of said Strain, a copy of which is hereunto annexed, marked Exhibit B, to which your orators refer for greater

certainty, and pray may be taken as a part of this their bill of complaint.

And your orators further show that they still own and hold the said note of Adams & Brother for the said sum of one thousand eight hundred and twenty-eight dollars and ninety-seven cents; that they paid a valuable consideration for said note, and that the whole of the said sum, with interest from the twentieth day of November, one thousand eight hundred and fifty-six, together with exchange on New York, to wit, six per cent., is now due and payable to your orators, (with
37 the exception of seventy-three dollars and sixty-nine cents, for which the said note of Adams & Brother should be credited,) and that the said Adams & Brother refuse to pay the same, although often requested so to do; and that your orators still hold as collateral security as aforesaid the said note of Joshua Cushing and the deed securing the same, and that there is due, as your orators believe, on the last-mentioned note the sum of sixteen hundred dollars, with interest from the seventh day of October, one thousand eight hundred and fifty-six; and that the said Joshua Cushing, although often requested, refuses to pay the same, and that no proceedings at law have been had to recover the debt secured by the last-mentioned note and deed, or any part thereof.

And your orators further show unto your honors, and state the same on information and belief, that the said Sarah P. Cushing is the wife of the said defendant Joshua Cushing, and that she joined her said husband in the execution of said deed.

And your orators further show unto your honors that, at the time of the assignment of the said deed and note as aforesaid, said Adams being the trustee named in said deed, agreed to proceed to sell, as trustee, said premises, as your orators might direct and apply the proceeds of such sale to the payment of the aforesaid note of Adams & Brother, in case the same should not be paid at maturity, within thirty days thereafter, if requested by your orators, as by reference to said receipt in writing of said Strain, a copy of which is hereunto attached, will more fully appear; that your orators have frequenty ap-
38 plied to said Adams and Adams & Brother to pay the amount due them, and have applied to said Adams, the trustee in said deed named, to sell said premises under said deed of trust and by virtue of the said trust contained therein, according to his said agreement with your orators, as he ought to have done; that said Adams refused to pay your orators the amount due them, and also refused to make sale of the said property upon said trust deed.

And your orators further show uuto your honor that the said defendant Joshua Cushing and said Adams & Brother, or either of them, have not paid the said debt to your oratars, or any part thereof, except as hereinbefore stated; that said Orville N. Adams, after the assignment and transfer of said note and trust deed to your orators, as herein stated, for the purpose of defeauding your orators, did cause said Cushing to convey the same lands to him in full satisfaction of the said claim of your orators, without any lawful right whatever, and greatly to the prejudice of your orators.

And your orators further show unto your honors that said Orville N. Adams, before the commencement of this suit, had been applied to in behalf of your orators to make sale of said lands described in said deed, in pursuance of the trust in said deed contained, for the purpose of satisfying your orators' said debt, and that said Adams refused to make such sale, sometimes pretending that the debt of your orators had been fully paid, and sometimes pretending that
39 your orators had ample security without this, all of which pretences are contrary to the fact, and were made to injure your orators in the premises.

And your orators further show unto your honors that said Adams & Brother had become insolvent before the assignment and transfer of said note and deed to your orators; that at the time said Adams procured of said Cushing a deed of said land he was then insolvent, and is now insolvent.

But now so it is, may it please your honors, that the said Orville N. Adams and Joshua Cushing, combining and confederating together, and with divers persons at present unknown to your orators, whose names when discovered your orators pray they may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orators in the premises, they, the said Adams and said Joshua Cushing, absolutely refuse, and each of them absolutely refuses, to comply with such reasonable requests, and for reasons whereof said defendant set up a variety of unfounded pretences.

Your orators therefore ask the aid of this honorable court in the premises, and that the said defendants may appear before this honorable court and answer this your orators' bill according to the rules and practice of said court, and that they may, if they can, show why your orators should not have the relief hereby prayed, and may, according to the best and utmost of their several and respect-
40 ive knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things stated in this bill, your orators hereby expressly waiving, pursuant to the statute, the necessity of the answer of said defendants being put in under the oaths of said defendants or the oath of either of them; that your orators may have a decree declaring the lien of said deed of trust upon the property, according to its terms, as a security in fee, subject only to redemption as therein provided; that a decree may be entered removing said Adams as trustee, and that a trustee may be appointed in place of said Adams by an order of this court, with the same powers and duties as are by the said trust deed conferred and imposed upon the said Adams, trustee, and that said trustee so to be appointed have full power to do any and all acts which said Adams as trustee might do; and that your orators may have such other or further relief in the premises as the nature of their case may require and as to your honors may seem agreeable to equity, and may it please your honors to grant unto your orators the people's writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said defendants, Joshua Cushing, Sarah

P. Cushing, and Orville N. Adams, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty to be therein inserted that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience.

And your orators will ever pray, &c.

ARCHIBALD YOUNG,
ELBERT H. VAN KLEEK,
By E. S. SMITH,
their Agent and Solicitor.

E. S. SMITH,
Solicitor Complainants and of Counsel.

Exhibit A, in foregoing bill referred to.

This indenture, made this seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, between Joshua Cushing and Sarah P. Cushing, his wife, of the county of La Salle, and the State of Illinois, parties of the first part, and Orville N. Adams, of the county of La Salle, in the State of Illinois, party of the second part, witnesseth: That the said parties of the first part, for and in the consideration of the sum of sixteen hundred dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell to said party of the second part the following described tracts or par-
42 cels of land situate in the county of La Salle, and State of Illinois, viz., the west half of the southwest quarter of the southwest quarter of section No. twenty-three, and the west half of the east half of the southwest quarter of section No. twenty-three; also the following, in section No. twenty-two, commencing on the south line of section No. twenty-two, town. thirty-three, range one east, at a point forty-six rods east of the middle line of said section; thence west on said line thirty-three rods; thence due north to the Illinois river; thence an easterly course along said river to a point on said river due north from the place of beginning; thence due south to the place of beginning, containing eight acres, more or less, all of the above-described tracts being in T. 33 north, range N. 1 E., 3d p. m., together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said premises above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, and the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all

incumbrances, and that the above bargained premises, in the
43 quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, they will forever warrant and defend; in trust, nevertheless, for the uses and purposes hereinafter mentioned, to wit:

Whereas the said Joshua Cushing is indebted to Orville N. Adams in the sum of sixteen hundred dollars, made payable one year from date hereof by a promissory note bearing even date herewith, given by the said Joshua Cushing to the said Orville N. Adams; if the said Joshua Cushing shall pay the said note when the same shall become due, then this deed given by the said parties of the first part, to the said party of the second part in trust for the payment of said sum, to be void; otherwise the said parties of the first part do constitute and appoint the said party of the second part trustee, with full and ample power to sell the above-described tracts and parcels of land at public sale, by first giving notice ten days, in some paper published in the town of La Salle. The money derived from said sale to be applied by the said trustee, first to the payment of all costs accruing by said sale; secondly, to the payment of said above-mentioned note, and, thirdly, the residue, if any, to be paid to the said Joshua Cushing, hereby ratifying and confirming all such agreements, conveyances, and deeds as shall be made in the premises by their said trus-
44 tee, the same as if they were personally present and did the same.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed JOSHUA CUSHING. [SEAL.]
(Signed) SARAH P. CUSHING. [SEAL.]

Exhibit B.—Acknowledgment.

Rec'd May 19th, 1856, of O. N. Adams & Brother the following notes, to be held by me as collateral security for the payment of a note made by the said O. N. Adams & Brother, dated New York, May 20th, 1856, payable six months after date at the banking-house of Herman Baldwin, La Salle, Ill., to Archibald Young & Van Kleck, of N. Y., for the sum of one thousand eight hundred and twenty-eight and $\frac{97}{100}$ dollars, with exchange on New York, to wit: one note on Joshua Cushing for $1,600, dated Oct. 7th, 1855, payable to O. N. Adams one year after date; one note on James and Levi Call, dated March 1st, 1856, payable 6 mo's after date to O. N. Adams & Brother, for $87 35; one note, payable to O. N. Adams & Bro., made by Henry Pearson, Henry Cross, and J. C. Pearson, dated Ap'l 14th, 1856, payable September 1st, 1856, for $22 00; one note made by Henry Pearson and Henry Cross, to the same, for $58 33, bearing date Ap. 15, 1856, payable Nov. 1st, 1856; one note made by James McNugh, to the same parties, for $11 00, dated March 27, 1856, and pay-
45 able 6 mo's after date, with ten per cent.: a note made by E. S. McCaughy to same, dated Feb. 1st, 1856, payable one day after date, with ten per cent., for $30 00; a note made by Joseph Hannon and Abram Hess, to same parties, dated March 12th, 1856,

payable Sept. 1st, 1856, for $84 83, with ten per cent. The said note on Joshua Cushing is secured by a deed of trust on certain real estate therein described, which is also hereby assigned for the same purpose. The said Adams being the trustee named in said of trust hereby agrees to proceed to sell said property and apply the proceeds of such sale to the payment of his aforesaid note, in case he shall not pay the same at maturity, within thirty days thereafter, if requested by the said Young & Van Kleck, said securities being placed in my hands by the parties mutually, for the purpose aforesaid.

(Signed) JAMES STRAIN,
Agent for the said Adams & Bro. and said Young & Van Kleck.
E. S. SMITH,
Complainants' Solicitor.

Indorsed: Filed May 6, 1863.

WM. H. BRADLEY, *Cl'k.*

46 On this day, to wit, the 12th day of June, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and Orville N. Adams, impl'd with Lycurgus Edgerton. } Chancery.

Now come the defendants, by their solicitors, and call up their motion to dismiss this cause, and said motion coming on to be heard, upon an intimation by the court, the complainants come and by leave of court amend their bill, whereupon the court overrules said motion.

On this day, to wit, the 6th day of July, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

47 ARCHIBALD YOUNG and ELBERT H. Van Kleeck
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and Orville N. Adams, impl'd with Lycurgus Edgerton. } Chancery.

On motion of defendant Adams, by his counsel, time is extended two weeks within which to file his answer herein.

On this day, to wit, on the 20th day of July, A. D. 1863, came said defendant Orville N. Adams, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

48 United States circuit court, in chancery.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The answer of Orville N. Adams, one of the defendants, to the bill of complaint of Archibald Young and Elbert H. Van Kleeck, filed herein, complainants.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, answering, says: That he admits that the said defendant, Joshua Cushing, made and executed his promissory note for sixteen hundred dollars to this defendant, as is alleged and set forth in said bill of complaint, and that to secure the payment of the same said Joshua Cushing and wife made, executed, and delivered to this defendant a trust deed of the premises described in Exhibit A, which is attached to and made a part of the complainants' said bill,

49 and that said trust deed was duly recorded as in said bill is stated and set forth.

This defendant, further answering, admits that on or about the nineteenth day of May, A. D. 1856, the above-mentioned note for sixteen hundred dollars, and the deed of trust securing the same as aforesaid, together with several other smaller notes were duly assigned by this defendant to the complainants herein, or to one James Strain, the agent and attorney of the said complainants, for them, the said complainants, as collateral security for the payment of a certain promissory note made and delivered by this defendant and brother, under the firm name of Adams & Brother, to the complainants herein, as stated and set forth in said bill of complaint; but this defendant denies that said assignment of said deed and notes was ever recorded, and this defendant represents and shows unto your honor that said note for sixteen hundred dollars, the said trust deed, and said other collateral notes were deposited and left in the hands of the said James Strain, as the mutual agent of the said complainants and of this defendant, to be held by him as such collateral security for the payment of the said note given by this defendant and brother to the said complainants herein, as aforesaid.

This defendant, further answering, says that he has no knowledge or information as to whether the said complainants are the

50 owners and holders of said note of this deponent and brother for the sum of one thousand eight hundred and twenty-eight dollars and ninety-seven cents, as is alleged in said bill, other than what is gained from the bill itself, and leaves the said complainants to make such proof of this as they may be able.

This defendant, further answering, says that he denies that the said note last mentioned and the interest on the same, or the amount alleged in said bill of complaint to be due on the same for principal and interest, or any part thereof, is still unpaid, but on the contrary thereof this defendant avers that said note and the interest on the

same has been by this defendant fully paid and satisfied to the said complainants, as hereinafter stated and set forth. And your orator here represents and shows unto your honor, that some time in July, A. D. 1856, and soon after the assignment of the said sixteen hundred dollar note and trust deed to the complainants as collateral security as aforesaid, one Lycurgus Edgerton, Dennis Perkins, and Bowen, McNamara & Co. obtained judgments against this defendant in the circuit court of the United States for the northern district of Illinois; that subsequently executions were sued out of and under the seal of said court on said judgments, in due form of law,
51 directed to the marshal of said district to execute. Your orator further represents and shows unto your honor, that afterwards and on or about the sixteenth, seventeenth, and twenty-eighth days of July, A. D. 1856, said marshal levied said writs respectively on the said premises covered by said deed of trust made and executed by Cushing and wife to this defendant, and assigned by him to complainants as aforesaid, together with other property belonging to this defendant, that is to say, the levy under said McNamara's & Co. judgment was made on or about the 16th day of July, A. D. 1856; that under said Edgerton's judgment, on or about the 17th day of July, A. D. 1856; and that under said Perkins's judgment, on or about the 28th day of July, A. D. 1856, as by said writs and the indorsements thereon now remaining of record in said court will more fully appear when produced here in court.

This defendant, further answering, says that subsequently and on or about the 25th day of August, A. D. 1857, a sale was made by said marshal of the property so levied upon as aforesaid, including the said property contained or covered by said deed of trust above mentioned, and assigned to the said complainants as collateral as aforesaid.

This defendant, further answering, says that at said sale one J. M. Walker became the purchaser of the property so levied upon as aforesaid for the said plaintiffs in the three several executions above mentioned, at the instance and request of one E. S. Smith, the
52 attorney for the said McNamara & Co. and Perkins, as this defendant is informed and believes, the said J. M. Walker being the attorney for the said Edgerton in said suit.

This defendant, further answering, says that before the said sale above mentioned took place, and on or about the 27th day of November, A. D. 1856, the said Joshua Cushing and wife, with the knowledge and consent of James Strain, the agent of the complainants herein as aforesaid, deeded to this defendant the said property so covered and conveyed by said trust deed before mentioned in fee simple in full payment and satisfaction of the above-mentioned note for sixteen hundred dollars, so secured to be paid by the said deed of trust, as hereinbefore mentioned, a copy of which said deed is hereto attached marked Exhibit A, which your orator prays may be taken as a part of his answer.

This defendant, further answering, says that at the time the said Joshua Cushing and wife so deeded said premises to this defendant

in fee simple and in satisfaction of said note as aforesaid, the assignment of said note and trust deed to these complainants as aforesaid had never been recorded, and this defendant is informed and believes, and so charges the fact to be, that the said Joshua Cushing and wife, at the time they executed the said deed in fee simple to this defendant as aforesaid, had no knowledge or information that said note and trust deed had been so assigned or used as col-
53 lateral security as aforesaid, but executed and delivered the same to this defendant in good faith for the purpose and consideration hereinbefore stated.

This defendant, further answering, says that at the April term of the recorder's court of La Salle, in the year 1857, being the first term of the court organized under the law passed July 10th, 1857, and after this defendant became the purchaser of said Joshua Cushing's interest in the property mentioned in the trust deed as aforesaid, judgment was obtained against this defendant and brother in favor of James Strain upon the said note held by him for the complainants herein as aforesaid, and to secure the payment of which said trust deed and sixteen hundred dollar note had been given as collaterals as aforesaid.

This defendant, further answering, says that shortly after said judgment was obtained an execution was issued upon the same to the sheriff of La Salle county, and served upon a stock of goods belonging to this defendant and brother; that before the sale under said levy was made the supreme court of the State decided the "act" creating the said recorder's court of La Salle to be unconstitutional, thus rendering said judgment so obtained therein as aforesaid null and void, and thereupon said levy of the execution aforesaid was released, as by the records of said court when produced here in court will more fully appear.

54 This defendant, further answering, says that some time after the judgment and proceedings last aforesaid were had, and on or about the 27th day of October, A. D. 1857, a new arrangement was made between the said James Strain, as the agent and attorney of the said complainants herein, and this defendant, by which this defendant paid a part of his said note to the said complainants herein, and the said note for sixteen hundred dollars so assigned to the complainants as aforesaid, was cancelled and was to be given up, but by an oversight of this defendant said note was never taken up, and the said James Strain, as agent, &c., as aforesaid, as a substitute and in the place of said last-mentioned note, took a deed of a quarter section of land in Knox county, from C. K. Adams, the said brother of this defendant, who had the legal title to said quarter section of land, having first sent his partner, E. F. Bull, down to examine said land. The consideration named in said deed was two thousand dollars.

This defendant, further answering, says that upon the execution and delivery of said last-mentioned deed to the said James Strain, &c., as aforesaid, he, the said James Strain, made, executed, and delivered to this defendant a bond, conditioned that upon the payment by this defendant of the sum of nine hundred and nineteen dollars and

ninety-two cents, in one year from the date thereof, and the
55 further sum of nine hundred and nineteen dollars and ninety-two cents, in eighteen months from the date thereof, the two said sums of money, being the amount due from this defendant to the complainant herein on his said promissory note to them, the said complainants as hereinbefore mentioned, that then and in that case, he, the said James Strain, would deed the said last-mentioned quarter section of land to this defendant; but that if the said several sums of money should not be paid by this defendant, as required by the terms and conditions of said bond, that then the said bond should be void and of no effect, at the option of the said James Strain, the said agent and attorney of the said complainants herein as aforesaid, and all money paid by this defendant *and all money paid by this defendant* to the said James Strain, in pursuance thereof, and all right, title, and interest, either in law or equity, that this defendant, or any one claiming by, through, or under him, should or might have in or to said premises, should be forfeited, and their right to recover any portion thereof shall forever be barred, as by said deed now remaining of record in said county of Knox, when produced here in court, and by said bond when produced here in court, but which has never been recorded, will more fully appear; and your orator here attaches a copy of said deed and bond, marked Exhibit B and C, respectively, which he prays may be taken as a part of his answer herein.

56 This defendant, further answering, represents and shows unto your honor, that it was expressly understood and agreed by and between this defendant and the said James Strain, as the agent of the complainants herein as aforesaid, at the time the last-mentioned deed and bond were made and executed, that if this defendant should not pay the said sums of money in said bond mentioned at the time and in the manner therein mentioned, that then and in that case the said last-mentioned quarter section of land was to be and should be deeded to the said complainants herein, in full payment and satisfaction of the said debt and note of this defendant and brother to the said complainants, as hereinbefore mentioned and set forth.

This defendant, further answering, says that at the expiration of eighteen months from the date and giving of said bond, the said sums of money in said bond mentioned and therein required to be paid as aforesaid, not having been paid by this defendant, the said complainants herein demanded a deed of said premises, in pursuance of said bond and agreement, which deed the said James Strain then and there made, executed, and delivered to the said Archibald Young, one of the said complainants herein, in pursuance and in conformity with said bond and agreement hereinbefore mentioned, a copy of which said deed is hereto attached, marked Ex. D; and this defend-
57 ant avers that by the taking of said deed by the complainants herein of said quarter section of land, the said debt and note of this defendant and brother to the said complainants became fully paid and satisfied, both in law and in equity, and this defendant fully and forever discharged therefrom, as this defendant claims was the

intention and understanding of the parties at the time said last-mentioned bond and agreement were executed as aforesaid.

This defendant further represents and shows unto your honor that the said complainants have exercised acts of ownership over and paid the taxes upon said last-mentioned premises, ever since the above-mentioned deed of James Strain to them was made and executed, as this defendant is informed and believes.

This defendant, further answering, says that at the expiration of fifteen months from the date of said sale under the said several executions hereinbefore mentioned, said E. S. Smith and J. M. Walker, as the attorneys or agents of the said several plaintiffs in said executions, as this defendant is informed and believes, divided the property sold on the said several executions, and by an order of this court the marshal was directed to deed to the respective plaintiffs in said several executions the property so divided and set off to each. And this defendant further represents and shows unto your honor, that in obedience to and in pursuance of said order of this court as afore-
58 said, the said marshal deeded to the said Lycurgus Edgerton, one of the said plaintiffs in said last-mentioned executions, the same property mentioned in the said trust deed hereinbefore mentioned, and which was sold under said executions as aforesaid, that being the property set off by the said E. S. Smith and J. M. Walker in their said division aforesaid to him, the said Lycurgus Edgerton, as his share under the said several executions as aforesaid. This defendant further represents and shows unto your honor, that the said Lycurgus Edgerton is now the owner of and in possession of said last-mentioned premises, under and by virtue of his said deed from the said marshal as aforesaid, and that said premises are the identical premises to sell which the said complainants now here seek to have a new trustee appointed, being the same premises conveyed and covered by the deed of trust hereinbefore mentioned.

This defendant, further answering, upon information and belief represents and shows unto your honor that the said Lycurgus Edgerton is an innocent purchaser of said last-mentioned premises, for a valuable consideration, as hereinbefore shown; that he, the said Lycurgus Edgerton, purchased said premises without any knowledge or information whatever of the assignment of said premises to the complainants herein as collateral security as aforesaid, and while said premises stood upon the records of the county wherein they
59 were situated in the name of this defendant as owner in fee simple of the same; and this defendant avers and here represents and shows unto your honor that the said assignment of said last-mentioned premises covered by the trust deed aforesaid, and the said sixteen hundred dollar note by this defendant to the complainants herein, as collateral security as aforesaid, has never been recorded, as he is informed and believes; that it was not recorded at the time of the said sale under the several executions as aforesaid, nor at the date of the deed of said premises to the said Lycurgus Edgerton by the said marshal as aforesaid.

This defendant further represents and shows unto your honor and

submits, that by the said deed in fee simple by said Joshua Cushing and wife to this defendant of the trust premises aforesaid the said trust estate became merged in the higher estate of fee simple in this defendant, both coming together in the same person, and this defendant avers that after said estates had so become merged in this defendant as aforesaid, and while said premises stood upon the records of La Salle county, in which the same were situated, in the name of this defendant in fee simple, the said premises were sold as aforesaid and purchased by the said Lycurgus Edgerton as hereinbefore stated.

This defendant, further answering, denies that he has ever at any time refused to execute the trusts in said trust deed contained,
60 or that the said complainants have ever requested him to execute said trusts or any of them, or to sell said premises in said trust deed contained, as is alleged and set forth in said bill of complaint.

This defendant, further answering, submits that said trust estate having become merged in the estate of fee simple in this defendant as aforesaid, and having since that time and while said premises stood upon the records of the proper county where said premises were situated in the name of this defendant as owner in fee simple of the same, and having been sold and conveyed to a third and innocent purchaser for a valuable consideration as aforesaid, there is and can be no trusts to execute in the premises under the facts and circumstances hereinbefore stated; that said premises, by the proceedings hereinbefore stated and set forth, have become vested in the said Lycurgus Edgerton in fee simple, fully released and discharged from the trusts now sought by said bill to be enforced.

This defendant, further answering, denies all unlawful combination and confederacy in the said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

61 All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

ORVILLE N. ADAMS.

WALKER & DEXTER, *Att'ys for Def'ts.*

62 *Exhibit A.*

This indenture, made this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-six, between Joshua Cushing and Sarah P. Cushing, his wife, of the county of La Salle, and State of Illinois, of the first part, and Orville N. Adams, of the county of La Salle, and State of Illinois, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of five thousand dollars *dollars* lawful money of the United States of America to them in hand paid by the said party of

the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed, and confirmed, and by these presents do alien, remise, release, convey, and confirm unto the said party of the second part, and his heirs and assigns, the following described tract or parcel of land, situated in the county of La Salle, and State of Illinois, viz., to wit, commencing on the south line of section twenty-two, township thirty-three (33) north, range one (1) east of the third principal meridian, at a point (46) forty-six rods east of the middle line of said section, and running due west on said line of said section, and running due west on said line thirty-three (33) rods, and thence due north to the Illinois river; thence an easterly course along said river to a point on said river due north from the place of
63 beginning; thence due south to the place of beginning, containing eight acres, be the same more or less, (less a strip one hundred feet wide on the west end of said lot;) also the west half of the east half of the southwest quarter of section No. twenty-three, (23,) excepting such interest in said land as has been heretofore granted and sold to the Illinois Central Railroad Company by said party of the first part; also the west half of the southwest quarter of the southwest quarter of section twenty-three, (23,) both in township thirty-three north, of range one east of the third principal meridian, sixty acres more or less, excepting and reserving the lot fifty (50) feet wide running from the street to the river heretofore sold to the party of the first part to Charles Todd & Bro., together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said Joshua Cushing, for himself, his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second
64 part, his heirs and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible estate of inheritance in fee simple, and has good right to sell and convey the same, in manner and form aforesaid; that they are free from all incumbrances; and the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the claim of all persons whomsoever, he will forever warrant and defend.

In witness whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

JOSHUA CUSHING. [SEAL.]
SARAH P. CUSHING. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF ILLINOIS, *La Salle county, town of La Salle, ss:*

On this twenty-seventh day of November, 1856, personally appeared before me, a notary public in and for said town in said county, Joshua Cushing, to me personally known to be the person whose name is subscribed to the above deed, as having executed the same, and acknowledged that he had freely executed the same for the purposes therein expressed; and Sarah P. Cushing, wife of said Joshua Cushing, to me known to be the person whose name is sub-
65 scribed to the same deed, also appeared before me, and was by me made acquainted with the contents of the same, and examined separate and apart from her said husband whether she executed the said deed and relinquished her dower in the lands and tenements therein mentioned voluntarily and freely, and without compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower in the lands and tenements therein mentioned voluntarily and freely, and without compulsion of her said husband.

Given under my hand and seal notarial the day and year aforesaid.

[SEAL.] E. FOLLETT BULL, *Notary Public.*

STATE OF ILLINOIS, *La Salle county*—1214 :

I hereby certify that this deed was filed for record Ap'l 4th, A. D. 1857, at 5 o'clock p. m., and duly recorded in book 52 of , page 683.

J. F. NASH, *Clerk.*

Exhibit B.

This indenture, made and entered into this eighteenth (18th) day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between Chauncey K. Adams, of the county of Knox, and State of Illinois, (late of the city and county of La Salle,) of the first part, and James Strain, of the city and county of La Salle, of the second part, witnesseth: That the said party of the first part,
66 for and in consideration of the sum of two thousand dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell unto the said party of the second part, heirs and assigns, certain tract or parcel of land, situated in the county of Knox, and State of Illinois, being the northwest quarter of section number eight, (8,) township (11) eleventh north, of range number four (4) east of the fourth principal meridian, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, heirs and assigns, forever; and the said party of the first part, for himself and heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, heirs and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and has good right to sell and convey

the same in manner and form as aforesaid; that the said premises are free from all incumbrances; and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, heirs and assigns, against the claim of all persons whomsoever, he will forever warrant and defend.

In testimony whereof, the said Chauncey K. Adams has
67 hereunto set his hand and seal the day and year first above written.

CHAUNCEY K. ADAMS. [SEAL.]

STATE OF ILLINOIS, *Knox county, ss:*

I, Cephas Arms, clerk of the circuit court for said county, do certify that on this day appeared before me Chauncey K. Adams, whose name appears signed to the foregoing deed of conveyance, and who is personally known to me to be the identical person whose name is subscribed to said deed as having executed the same, and acknowledged that he had executed the same as his voluntary act and deed, for the uses and purposes therein expressed.

Given under my hand and seal at Knoxville, this 19th day of September, eighteen hundred and fifty-seven.

[SEAL.] CEPHAS ARMS,
Clerk of Circuit Court, Knox Co., Ill's.

STATE OF ILLINOIS, *Knox county, ss:*

I, Cephas Arms, clerk of the circuit court and ex officio recorder within and for said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of a deed from Chauncey K. Adams to Jas. Strain, as the same remains of record in my
68 office.

Witness my hand and the seal of said court at my office, in Knoxville, this 10th day of July, A. D. 1860.

[SEAL.] CEPHAS ARMS, *Clerk.*

STATE OF ILLINOIS, *Knox county, ss:*

This instrument was filed for record on the 31st day of March, A. D. 1859, at 2 o'clock p. m., and was duly recorded in book 39 of deeds, page 358.

CEPHAS ARMS, *Recorder.*

Exhibit C.

This indenture, made this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-seven, between James Strain, of the city and county of La Salle, in the State of Illinois, party of the first part, and Orville N. Adams, of the same place, party of the second part, witnesseth: That the said party of the first part hath agreed to sell and convey, and hereby doth agree to sell and convey, unto the said party of the second, by deed of general warranty, the following described , situated in the county of Knox, in the State of Illinois, to wit: the northwest quarter of section number eight (8,)

in township number eleven (11) north, range number four (4) east of the fourth principal meridian, and that the said party of the second part agrees to pay unto the said party of the first part, his heirs
69 and assigns, the sum of one thousand eight hundred and thirty-nine and $\frac{84}{100}$ dollars, with interest thereon from date, at the rate of ten per cent. per annum, as follows, to wit, nine hundred and nineteen and $\frac{97}{100}$ dollars in one year from the date hereof, and the further sum of nine hundred and nineteen and $\frac{87}{100}$ dollars in eighteen months from the date hereof; and the said party of the first part hereby covenants to and with said party of the second part, that upon the payment of said money punctually at the times aforesaid, together with interest as above specified, he will make, execute, and deliver unto him, his heirs and assigns, a good and sufficient deed of general warranty for the premises above described. It is further expressly understood between the parties hereto that time is of the essence of this contract, and that if the said party of the second part shall fail to pay said money at the times severally above mentioned, that then, at the option of said party of the first part, these presents shall be void, and all money paid by said party of the second part, or any one on his behalf, to said party of the first part in pursuance hereof, and all right, title, and interest, either in law or in equity, that said party of the second part, or any one claiming by, through, or under him, shall or may have in or to said premises shall
70 be forfeited, and their right to recover any portion thereof shall forever be barred.

In testimony whereof, the parties hereto and to one other instrument of like date, tenor, and effect, have hereunto set their hands and seals the day and year above written.

JAMES STRAIN. [SEAL.]
ORVILLE N. ADAMS. [SEAL.]

Exhibit D.

No. 27,766.—Filed May 27th, A. D. 1859, at 1 o'clock p. m.

This indenture, made this twenty-first day of May, A. D. one thousand eight hundred and fifty-nine, between James Strain and Nancy Y. Strain, of the county of La Salle, and State of Illinois, parties of the first part, and Archibald Young, of the city of New York, party of the second part, witnesseth: That said party of the second part, for and consideration of the sum of one dollar to them in hand paid by said party of the second part, and in consideration also that on the day of A. D. 185 , the said James Strain received a conveyance of the tract of land hereinafter described, from Chauncey K. Adams, and holds the same in trust for the said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, in trust for the firm of Archibald Young and Van Kleeck, the following described tract of land, situated in the county of Knox, and State of Illinois, to wit, the northwest quarter of section

71 number eight (8) in township No. eleven (11) north, range No. four (4) east of the fourth principal meridian, containing one hundred and sixty acres, more or less, together with all and singular the hereditaments and appurtenances hereunto belonging or in anywise appertaining, to have and to hold the same to the said party of the first part, his heirs and assigns, forever; and the said James Strain, for himself, his heirs, and assigns, doth hereby covenant to and with the said party of the second part, his heirs and assigns, that he is well seized of the premises above conveyed, as of a good and indefeasible estate in fee simple, and has good right to sell and convey the same in manner and form as aforesaid; that the same are free and clear from all incumbrance whatsoever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, he will forever warrant and defend against all persons claiming through or under him.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

JAMES STRAIN. [SEAL.]
NANCY Y. STRAIN. [SEAL.]

STATE OF ILLINOIS, *La Salle county, town of La Salle, ss:*

72 I, E. Follett Bull, a notary public in and for the said town, county, in the State aforesaid, do hereby certify that James Strain, personally known to me as the same person whose name is subscribed to the above warranty deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said warranty deed as his free and voluntary act, and for the use and purpose therein set forth; and the said Nancy Y. Strain, wife of the said James Strain, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of said warranty deed having been by me fully made known and explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her husband, and that she does not wish to retract the same.

Given under my hand and seal notarial, this 21st day of May, A. D. 1859.

[SEAL.] E. FOLLETT BULL, *Not. Pub.*

STATE OF ILLINOIS, *Knox county, ss:*

I, Cephas Arms, clerk of the circuit court and ex officio recorder within and for the county of Knox and State aforesaid, do hereby certify that the foregoing is a true and correct copy of a deed
73 from Jas. Strain and wife to A. Young, as the same remains of record in my office.

Witness my hand and the seal of said court, at my office in Knoxville, this 10th day of July, A. D. 1863.

[SEAL.] CEPHAS ARMS, *Cl'k.*

Indorsed: Filed July 20, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 20th day of July, A. D. 1863, came said defendants, Joshua Cushing and Sarah P. Cushing, by their solicitor, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

74 United States circuit court, in chancery.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The joint and several answer of Joshua Cushing and Sarah P. Cushing, two of the defendants, to the bill of complaint of Archibald Young and Elbert H. Van Kleek, filed herein, complainants.

These defendants, now and at all times hereafter saving and reserving to themseves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, answering, say that they admit that the said defendant Joshua Cushing, made the promissory note mentioned in the said bill of complaint to the said defendant, Orville N. Adams, at the time, for the amount, and upon the consideration named in said bill. These defendants also admit that they made, executed, and delivered the trust deed in said bill mentioned for the purpose of securing said note, as is alleged and set forth in said bill of complaint, and
75 that the same was acknowledged and recorded as therein stated, a copy of which is attached to said bill and marked Exhibit A.

These defendants, further answering, say that they have no knowledge or information that said trust deed and note were ever assigned to the complainants herein, or used as collateral security as stated and set forth in said bill, or that they were ever deposited in the hands of the said James Strain for the purpose and as stated in said bill, or for any other purpose, and therefore these defendants cannot answer anything concerning the same; but these defendants represent and show unto your honor, and so state the fact to be, that said assignment, if any such was made, was never recorded or placed upon the records of *of* La Salle county, the place where said trust premiscs were situated.

These defendants, further answering, say that they have no knowledge or information concerning the note in said bill mentioned as having been given by said Orville N. Adams and brother to the complainants herein, and therefore cannot answer anything concerning the same.

These defendants, further answering, say that they have no knowledge or information, other than what is gained from the complainants' said bill, whether the said complainants are the holders of said note made by the said defendant Joshua Cushing to the said defendant Orville N. Adams, and secured by the deed of trust aforesaid,
76 or not; but these defendants represent and show unto your honor, and so state the fact to be, that said note has been fully

paid and satisfied to the said defendant Orville N. Adams, as hereinafter stated.

These defendants, further answering, deny that the said complainants or either of them have ever called upon these defendants to pay said note to them, or that they have any knowledge or information that the complainants hold said note, other than is gained from said bill of complaint, nor have they ever supposed that the said complainants ever claimed to be the owners and holders of said note.

These defendants, further answering, represent and show unto your honor that some time after the making of said note and trust deed, and about the time said note became due, to wit, on the 27th day of November, 1856, the said defendant Joshua Cushing, being unable to pay said note so secured by the deed of trust as aforesaid, these defendants made, executed, and delivered to the said defendant Orville N. Adams a deed of said trust premises in fee simple, in full payment and satisfaction of said note so secured by the deed of trust as aforesaid, a copy of which said deed in fee simple is attached to the answer of the said defendant Orville N. Adams, filed herein, which these defendants pray may be taken as a part of their answer herein.

These defendants, further answering, say that at the time
77 they so deeded said trust premises to the said defendant Orville N. Adams in fee simple as aforesaid, they had no knowledge or information that said trust deed and note had ever been assigned or used as collateral security, as in said bill of complaint is alleged and set forth; that said assignment had never been recorded; nor had these defendants in any other way any knowledge or information that said trust deed and note had been assigned or used as collateral security as aforesaid.

These defendants, further answering, represent and show unto your honor, and so state the fact to be, that they made, executed, and delivered said deed in fee simple of said trust premises to the said defendant Orville N. Adams in full payment and satisfaction of said note so secured by said deed of trust as aforesaid, and in good faith, without any knowledge of the assignment aforesaid, and upon the belief that the said Orville N. Adams was then the owner and holder of said note and trust deed.

These defendants, further answering, say that as to all the other matter and things in said bill alleged and set forth, not hereinbefore fully answered, these defendants have no knowledge or information, and therefore cannot state anything in relation to the same.

And these defendants deny all unlawful combination and confederacy in the said bill charged, without that any other matter or thing
material or necessary for these defendants to make answer
78 unto, and not herein and hereby well or sufficiently answered and confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence discharged

with their reasonable costs and charges in that behalf most wrongfully sustained.

JOSHUA CUSHING and
SARAH P. CUSHING,
By WALKER & DEXTER,
their Attorneys.

WALKER & DEXTER, *Att'ys for Pl'tiffs.*

Indorsed: Filed July 20, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 29th day of July, A. D. 1863, came said complainants, by their solicitor, and filed in said clerk's office their replications in said entitled cause, which said replications are in the words and figures following, to wit:

79 Circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery sitting.

ARCHIBALD YOUNG and ELBERT H. VAN Kleeck, complainants,
vs.
ORVILLE N. ADAMS, JOSHUA CUSHING, and Sarah P. Cushing, defendants.

UNITED STATES OF AMERICA, *ss:*

The replication of the above-named complainants to the answer of the above-named defendant, Orville N. Adams, filed in the above-entitled cause.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall di-
80 rect; and humbly pray as in and by their said bill they have already prayed.

E. S. SMITH, *Solicitor for Complainants.*

Indorsed: Filed July 29, 1863.

WM. H. BRADLEY, *Cl'k.*

Circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery sitting.

ARCHIBALD YOUNG and ELBERT H. VAN Kleeck, complainants,
vs.
ORVILLE N. ADAMS, JOSHUA CUSHING, and Sarah P. Cushing, defendants.

UNITED STATES OF AMERICA, *ss:*

The replication of the above-named complainants to the joint and several answer of the above-named defendants, Joshua Cushing and Sarah P. Cushing, filed in the above-entitled cause.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these
82 repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

E. S. SMITH, *Solicitor for Complainants.*

Indorsed: Filed July 29, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 29th day of July, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and Orville N. Adams, impl'd with Lycurgus Edgerton. } Chancery.

On motion of complainants' solicitor, it is ordered that it be referred to Henry W. Bishop, jr., a master in chancery of this court, to take proof herein.

83 On this day, to wit, the 28th day of October, A. D. 1863, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEECK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and Orville N. Adams, and Lycurgus Edgerton. } Chancery.

Now come the defendants, by their solicitors, and on their motion leave is given them to take additional testimony, the same to be done

within ten days, and at defendants' expense; and the defendants are to give notice to the complainants of the time and place of taking said testimony.

On this day, to wit, the fourth day of November, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

84 ARCHIBALD YOUNG *et al.* *vs.* JOSHUA CUSHING *et al.* } Chancery.

On motion of defendants' solicitor, the time within which the defendants are to close their proofs herein is further extended ten days.

On this day, to wit, the seventh day of December, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN Kleeck *vs.* JOSHUA CUSHING, SARAH P. CUSHING, Orville N. Adams, and Lycurgus Edgerton. } Chancery.

On motion of complainants' solicitor, and on affidavit filed, it is ordered that a commission issue on notice and interrogatories filed.

On this day, to wit, the 17th day of December, A. D. 1863, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

85 ARCHIBALD YOUNG and ELBERT H. VAN Kleeck *vs.* JOSHUA CUSHING, SARAH P. CUSHING, ORVILLE N. Adams, and Lycurgus Edgerton. } Chancery.

Now come the complainants, by their solicitors, and move the court for a commission to take the deposition of Thomas Rutherford, and the court sustains said motion, subject to the judgment of the court as to the expense of taking such deposition after its return.

On this day, to wit, the 6th day of February, A. D. 1865, come said defendants, by their solicitors, and filed in said clerk's office their motion to dismiss in said entitled cause; which said motion is in the words and figures following, to wit:

86 United States circuit court, northern district of Illinois, in chancery.

ARCHIBALD YOUNG *et al.* *vs.* JOSHUA CUSHING *et al.* }

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Now this day come the defendants in the above cause, by Walker

& Dexter, their attorneys, and move the court to dismiss said suit for want of jurisdiction in said court to try and determine the same, and also for the reason that it appears from the evidence in said cause that there is a want of proper and necessary parties defendant thereto, without which no decree can be entered in said cause.

WALKER & DEXTER,
Sol't'rs for Def'ts.

Indorsed: Filed Feb'y 6, 1865.

WM. H. BRADLEY, *Cl'k.*

87 On this day, to wit, the fourteenth day of February, A. D. 1865, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEEK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and ORville N. Adams. } Chancery.

Now come the parties, by their solicitors, and by agreement this cause is set down for hearing upon the bill, answers, replications, proof, and exhibits on file, and the court, after hearing the arguments of counsel, and not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 19th day of July, A. D. 1865, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

ARCHIBALD YOUNG and ELBERT H. VAN KLEEK
vs.
JOSHUA CUSHING, SARAH P. CUSHING, and ORville N. Adams. } Chancery.

88 The court having considered, and being now fully advised upon the matters heretofore submitted herein, orders that the bill of complaint herein be dismissed, without prejudice, at the costs of the complainants. It is thereupon considered and adjudged by the court that the said defendants do have and recover of and from the said complainants their costs and charges by them about their defence in this behalf expended, amounting to the sum of dollars and cents, and that they have execution therefor.

And the complainants, by their solicitors, pray an appeal to the Supreme Court, which is granted, conditioned that they file a bond in the sum of five hundred dollars, with security to be approved by the court, within ten days from this date.

89 On the hearing of said cause the following testimony was offered and read in evidence.

Complainants' testimony.

Deposition of E. Follett Bull, taken on the 12th day of September, A. D. 1862, at Chicago, Illinois, before Philip A. Hoyne, U. S. commissioner, on behalf of the complainants, together with the exhibits therein referred to and thereto attached.

90 My name is E. Follett Bull. I am 28 years old. I am an attorney, and I reside at La Salle, in the county of La Salle, and State of Illinois. I have only a business acquaintance with the complainants by correspondence. I am personally acquainted with all the defendants save Mr. Edgerton, and a slight business acquaintance with him.

Q. Do you know anything about a business transaction between the defendant Orville N. Adams and the complainant which took place on or about the 19th of May, 1856? If yea, state what you know about said transaction.

Answer. About the 19th of May, 1856, Mr. Adams, on behalf of the firm of O. N. Adams & Bro., and a man calling himself Whitehead, and representing himself as the agent of complainants, came into Jos. Strain's office at La Salle and left certain notes, together with a trust deed, to be held by Strain, as the mutual agent of the parties, as collateral security for a note of $1,828 97, dated May 20, 1856, given by O. N. Adams & Brother to Archibald Young & Van
91 Kleek. The principal note deposited was one for $1,600, bearing interest at ten per cent. after maturity, dated Oct. 7, 1855, due one year after date, drawn by Joshua Cushing in favor of Orville N. Adams, with a blank indorsement on the same by Adams, which note was secured by a trust deed, in which Orville N. Adams was the trustee, executed by the defendants Joshua Cushing and Sarah P. Cushing, his wife. The trust deed was given upon certain land in La Salle county, Illinois. The note given by Mr. Adams to the complainants matured the 20–23 November, 1856, and was placed in the hands of James Strain a short time after its maturity—I suppose, for the purpose of collection. My recollection is that there were no instructions given to sue the note or press the same for collection at that time. The matter stood in that way for some time. There had been no sale under the trust deed and no directions to sell about the time that the note given by O. N. Adams & Bro. to the complainants matured, according to the best of my recollection. Mr. Adams became the purchaser from Cushing of Cushing's interest in the property described in the trust deed. At the April term of the recorder's court of La Salle of the year 1857, being the first term of the court, organized under the law passed Feb'y 10, 1857, and after became
92 the purchaser of Mr. Cushing's interest in the property mentioned in the trust deed, judgment was obtained against O. N. Adams & Bro. in favor of James Strain upon the note held by him for Archibald Young and Van Kleek. Some time after the judgment was obtained an execution was issued upon the same to the sheriff of La Salle county, and levied upon a stock of goods in possession of Orville N. Adams or O. N. Adams & Bro. Before

any sale under the execution the supreme court of this State decided the recorder's court of La Salle, or the act creating it, to be unconstitutional, rendering the judgment null and void, whereupon the levy of the execution was released. After the levy had been released, Mr. Adams informed Mr. Strain and myself that his brother, Chauncey K. Adams, had a quarter section of land in Knox co., Ill's, that he, Orville N. Adams, could get from his brother for the purpose of settling up this claim, and desired, according to my recollection, that he should correspond with the complainants upon the subject, which we did. Mr. Adams having in the mean time disposed of his stock of goods, there being a large number of judgments standing against him, we thought it advisable, upon consultation with the complainants, to examine the land in Knox county, for the purpose of ascertaining its value, the state of the title, and its availability as security for the debt due the complainants upon Adams & Bro. Accordingly, some time in the fall of 1857, I went to Knox county, and with Chauncey K. Adams, upon what was represented to me as being the
93 quarter section of land deeded, as I shall hereafter state, by Chauncey K. Adams to James Strain, and I judge from the location that he went upon the quarter section spoken of. Being satisfied with the quality of the land and the state of the title, I took a deed for the same from Chauncey K. Adams to Jos. Strain, who held the same in trust for the complainants and James Strain, executed to Orville N. Adams a contract for the reconveyance of the same upon certain conditions, which contract is hereto attached to my deposition as Exhibit A. The amount called for in the contract was the balance due at that time from Adams & Bro. to complainants. My impression is that some time in May, 1859, in pursuance of a request either by letter or through one of their agents, this quarter section of land last spoken of was deeded by James Strain either to Archibald Young and Van Kleek or Archibald Young alone; I can't say which. Perhaps I had better add that in giving dates, and my testimony of course, that I may not be accurate; but I give my best recollection and impression.

Ques. At the time you took the deed from Chauncey K. Adams to James Strain of the land in Knox county, did you take the land in payment of the debt due to the complainants from O. N. Adams & Bro., or as security for that debt?

Answer. The understanding of the parties, as I supposed at the time, was as stated in "Exhibit A." I considered it as collateral security for the debt.

Ques. Was or was not the note of O. N. Adams & Bro. to
94 the complainants before spoken of, given up to O. N. Adams and Bro. at the time of the making of said deed?

Answer. It was not. I have no recollection of anything being said at the time about it being given up, but that when Mr. Adams ascertained that the land had been deeded by Mr. Strain to Mr. Young, he claimed that he was entitled to the note and trust deed upon Cushing and Cushing's note, but none were ever delivered up.

I make the following papers before referred to exhibits, as follows:

The trust deed from Cushing and wife to O. N. Adams, "Exhibit B." The note from Cushing to O. N. Adams, as "Exhibit C." The note and protest of O. N. Adams & Bro. to the complainants, "Exhibit D." The receipt from James Strain to Young & Van Kleek and O. N. Adams & Bro. is marked "Exhibit E."

Cross-examination on the part of O. N. Adams:

Ques. You say that none of the notes described in the receipt were given up. What became of the notes mentioned in receipt marked "Exhibit E," which are not made exhibits in your answer?

Answer. My recollection is that something over $100 were paid; it may have been more or less than that, but all I know of having been paid the proceeds were remitted to Archibald Young and Van Kleek, except commissions retained. I don't think they were all paid, but what has become of the balance I cannot state, as I
95 had no control over them. My impression is that some were worthless, or nearly so, or whether some of them were delivered up to Mr. Adams or not I cannot state. Some were sued, but nothing collected upon them.

Q. Did you personally have anything to do with this matter?

Answer. It was a matter that I always considered and supposed to be under the exclusive control of James Strain, who, at that time, was on friendly terms with Mr. Adams, and was chosen, as I understood, by both parties, a mutual friend. My understanding was that there was nothing to be done only to hold them as security until further orders from the parties interested. The peculiar relations existing Mr. Strain and the parties interested were such that I did not consider the matter as an ordinary collection of the firm of Strain & Bull, and supposed that it was the intention of the parties that Mr. Strain should have the exclusive control of the matter; and what I did in the matter myself was done principally, if not altogether, at the suggestion of Mr. Strain, or by his direction.

Q. Is not all you know in relation to this matter obtained from the papers themselves?

Answer. It is not altogether.

Q. What other knowledge have you in relation thereto aside from the papers?

Answer. The receipt, "Exhibit E," was copied by me, but
96 I heard no conversation at the time it was given. I have heard frequent conversations between Mr. Strain and Mr. Adams. The contract, marked "Exhibit A," was drawn up by me; I heard conversations at that time between Mr. Strain and Mr. Adams in relation to the matter. The original trust deed from Mr. Cushing to Mr. Adams was in my handwriting, but all the conversations that I now recollect of took place, after the judgment was obtained, in the recorder's court of La Salle heretofore spoken of. Upon reflection I don't but that Strain drew up the contract marked "A," and I copied it; my impression is that I drew it, at the request of Mr. Strain.

Q. Did not this transaction commence previous to the existence of the firm of Strain & Bull?

Answer. My impression is that there had been some talk or negotiation before the existence of the firm of Strain & Bull. The trust deed, marked "Exhibit B," was drawn before the formation of the firm of Strain & Bull. The receipt, marked "Exhibit E," was given after the formation of the firm, but was a transaction between James Strain alone and the firm of Archibald Young and Van Kleek, as I understood the matter.

Q. Do you know anything of the understanding between Mr. Strain and Mr. Adams at the time the contract, "Exhibit A," was given, aside from the contract itself in relation to said contract.

Answer. I knew of nothing aside from the contract, at that time at least.

97 Q. After the execution of the contract, "Exhibit A," did you ever have any conversation with Mr. Adams in connexion with Mr. Strain in relation to the contract "A," as to what was intended by it in the event Mr. Adams failed to pay the amount stipulated in his Exhibit A in 18 mo's, and whether it was not to be taken in satisfaction of the debt?

(Obj. to.)

Answer. I recollect a conversation that took place between Mr. Strain and Mr. Adams at which I was present a long time after the execution of the contract, "Exhibit A," and my impression is—after the maturity of the contract, in which either Mr. Strain or myself asked Mr. Adams if he should be able to redeem the land described in the contract—my recollection is that Mr. Adams replied something as follows:

"That at the time the contract was executed, he expected to be able to save some $500 or $600 out of the land; that he had taken the contract payable or running to himself, so that he could assign it and pass his interest thereon, clear of any lien that might be created by virtue of any judgment existing against him in the U. S. court; but that he should be unable to redeem the land, and if the complainants refused to wait any longer, Mr. Strain would have to make them a deed for the land, and let the land go, and pay the debt in that way. I don't recollect that Mr. Strain said much in return, but that he would write to Archibald Young and Van Kleeck to see what they would say about it. I think he did add that if they de-

98 manded a deed he should have to give it to him.

Re-examination:

Q. Was your impression, that the deed for the land in Knox county given by Chauncey K. Adams to Jas. Strain was given as collateral security for the debt due to these complainants from O. N. Adams & Bro., derived from anything said by O. N. Adams at the time? If yea, state the remarks of O. N. Adams; what gave you this impression?

Answer. My recollection is this: that Mr. Adams desired at the time the contract for the land was given, marked Exhibit A, to have the land taken for the debt if it was not redeemed, but Mr. Strain at that

time declined doing so; and that is the reason, as I understood it at the time, that the old notes were not given up.

E. FOLLETT BULL.

Subscribed and sworn to before me this 12th day of September, A. D. 1862.

PHILIP A. HOYNE,
U. S. Com., N. D. Ill.

"*Exhibit A.*"

This indenture, made this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-seven, between James Strain of the city and county of La Salle, in the State of Illinois, party of the first part, and Orville N. Adams, of the same place,
99 party of the second part, witnesseth, that said party of the first part hath agreed to sell and convey, and hereby doth agree to sell and convey, unto the said party of the second part, by deed of general warranty, the following described tract or parcel of land situated in the county of Knox, in the State of Illinois, to wit, the northwest quarter of section number eight (8) in township No. eleven (11) north, range No. four east of the fourth principal meridian; and that the said party of the second part agrees to pay unto the said party of the first part, his heirs or assigns, the sum of one thousand eight hundred and thirty-nine and $\frac{84}{100}$ dollars ($\$1,839\frac{84}{100}$) with interest thereon from date, at the rate of ten per cent. per annum, as follows, to wit, nine hundred nineteen and $\frac{92}{100}$ dollars, ($\$919\frac{92}{100}$,) in one year from the date hereof, and the further sum of nine hundred nineteen and $\frac{92}{100}$ dollars ($\$919\frac{92}{100}$) in eighteen months from the date hereof; and the said party of the first part, hereby covenants to and with said party of the second part that, upon the payment of said money punctually at the times aforesaid, together with interest as above specified, he will make, execute, and deliver unto him, his heirs or assigns, a good and sufficient deed of general warranty for the premises above described. It is further expressly understood between the parties hereto, that time is of the essence of this contract, and that if said party of the second part shall fail to pay said money at the times severally above mentioned,
100 that then, at the option of said party of the first part, these presents shall be void, and all money paid by said party of the second, or any one on his behalf, to said party of the first part, in pursuance hereof, and all right, title, and interest, either in law or in equity, that said party of the second part, or any one claiming by, through, or under him, shall or may have in or to said premises, shall be forfeited, and their right to recover any portion thereof shall forever be barred.

In testimony whereof, the parties hereto, and to one other instrument of like date, tenor, and effect, have hereunto set their hands and seals the day and year above written.

JAMES STRAIN. [SEAL.]
ORVILLE N. ADAMS. [SEAL.]

Exhibit B.

This indenture, made this seventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, between Joshua Cushing and Sarah P. Cushing, his wife, of the county of La Salle, and the State of Illinois, parties of the first part, and Orville N. Adams, of the county of La Salle, in the State of Illinois, party of the second part, witnesseth, that the said parties of the first part, for and consideration of sixteen hundred dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do
101 by these presents grant, bargain, and sell to said party of the second part, the following described tracts or parcels of land situated in the county of La Salle, and the State of Illinois, viz: the west half of the southwest quarter of the southwest quarter of section No. twenty-three, and the west half of the east half of the southwest quarter of section No. twenty-three; also the following in section No. twenty-two, commencing on the south line of section No. twenty-two, town thirty-three, range one east, at a point forty-six rods east of the middle line of said section, thence west on said line thirty-three rods, thence due north to the Illinois river, thence an easterly course along said river to a point on said river due north from the place of beginning, thence due south to the place of beginning containing eight acres, more or less; all of the above-described tracts being in T. 33 north, range No. 1 E., 3rd p. m., together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as
102 aforesaid; that they are free from all incumbrances; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, they will forever warrant and defend.

In trust, nevertheless, for the uses and purposes hereinafter mentioned, to wit: whereas the said Joshua Cushing is indebted to Orville N. Adams in the sum of sixteen hundred dollars, made payable one year from date hereof by a promissory note bearing even date herewith, given by the said Joshua Cushing to the said Orville N. Adams, if the said Joshua Cushing shall pay the said note when the same shall become due then this deed given by the said parties of the first part to the said party of the second part in trust for the payment of said sum to be void, otherwise the said parties of the first part do constitute and appoint the said party of the second part trustees with full and ample power to sell the above-described tracts and parcels of land at public sale, by first giving notice ten days in some paper

published in the town of La Salle, the money derived from said sale to be applied by the said trustee first to the payment of all costs accruing by said sale, secondly to the payment of the said above mentioned note, and thirdly the residue, if any, to be paid to the said Joshua Cushing.

Hereby ratifying and confirming all such agreements, conveyances, and deeds as shall be made in the premises by their said trus-
103 tee, the same as if they were personally present and did the same.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSHUA CUSHING. [SEAL.]
SARAH P. CUSHING. [SEAL.]

STATE OF ILLINOIS, *La Salle County, ss:*

On this seventh day of October, A. D. 1855, personally appeared before me, a notary public for the town of La Salle, in the said county, Joshua Cushing, to me personally known to be the person whose name is subscribed to the above deed as having executed the same, and acknowledged that he had freely executed the same for the uses and purposes therein expressed; and Sarah P. Cushing, wife of the said Joshua Cushing, to me personally known to be the person whose name is subscribed to the same deed, also appeared before me, and was by me made acquainted with the contents of the same and examined separate and apart from her said husband, whether she executed the said deed, and relinquished her dower in the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and acknowledged that she executed the same, and relinquished her dower in the land and tenements therein mentioned, voluntarily and freely, and without compulsion of her said husband.

Given under my hand and seal notarial the day and year aforesaid.

[SEAL.] JAMES STRAIN, *Notary Public.*

104 STATE OF ILLINOIS, *La Salle County:*

(No. 403.)

I certify that this deed was filed for record Jan'y 17, 1856, at 11¼ o'c. a. m., and duly recorded in Book 46, page 233 and 234.

J. F. NASH, *Clerk.*

Exhibit D.

$1,828 97. NEW YORK, *May 20th*, 1856.

Six months after date, we, the subscribers, of La Salle, county of La Salle, State of Illinois, promise to pay to the order of Arch'd Young & Van Kleeck, eighteen hundred and twenty-eight dollars and

ninety-seven cents, for value received, payable at the banking-house of Heman Baldwin, La Salle, Ill's, with current rate of exchange on New York.

O. N. ADAMS & BROTHER.

$1,197 due Nov. 20—23, '56.

Pay Heman Baldwin, esq., or order.

ARCH'D YOUNG & VAN KLEECK.

Pay James Strain, esq., or order without recourse on me.

HEMAN BALDWIN.

STATE OF ILLINOIS, *County of La Salle, ss:*

On this twenty-second November, in the year of our Lord one thousand eight hundred and fifty-six, I, Willis M. Hitt, notary
105 public, by legal authority admitted and sworn and dwelling in the city of La Salle, at the request of Heman Baldwin, esq., went with the original note, of which the foregoing is a true copy, to the counting house of O. N. Adams & Bro., and presented the same to the said O. N. Adams & Bro. for payment, when I received for answer that the same would not be paid; wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note, indorser, and all others concerned therein for exchange, re-exchange, and all costs, charges, damages, and interest suffered and sustained, or to be suffered and sustained by reason or in consequence of the non-payment of said note.

This done and protested in La Salle aforesaid, and my notarial seal affixed, the day and year last written.

[SEAL.] WILLIS M. HITT, *Notary Public.*

Recorded in Book A, page 52. Fees, $1 50.

$1,828$\frac{97}{100}$. NEW YORK, *May* 20, 1856.

Six months after date, we, the subscribers, of La Salle, county of La Salle and State of Illinois, promise to pay to the order of Arch'd Young & Van Kleeck, eighteen hundred and twenty-eight $\frac{97}{100}$ dollars, for value received, payable at the banking-house of Heman Baldwin, La Salle, Ill's, with current rate of exchange on New York.

O. N. ADAMS & BRO.

Indorsed: Pay Heman Baldwin, or order.

ARCH'D YOUNG & VAN KLEECK.

106 *Exhibit C.*

$1,600. LA SALLE, *October 7th*, 1855.

One year after date, I promise to pay to Orville N. Adams, or bearer, sixteen hundred dollars, at with int. at ten per cent. after maturity. Value received.

JOSHUA CUSHING.

O. N. ADAMS.

Exhibit E.

Rec'd, May 19th, 1856, of O. N. Adams & Brother, the following notes, to be held by me as collateral security for the payment of a note made by the said O. N. Adams & Brother, dated New York, May 20th, 1856, payable six months after date, at the banking-house of Heman Baldwin, La Salle, Ill., to Archibald Young & Van Klerck, of N. Y., for the sum of one thousand eight hundred and twenty and $\frac{97}{100}$ dollars, with exchange on New York, to wit: one note on Joshua Cushing for $1,600, dated Oct. 7th, 1855, payable to O. N. Adams, one year after date; one note on James and Levi Call, dated March 1st, 1856, payable 6 mos. after date, to O. N. Adams & Brother, for $87 35; one note payable to O. N. Adams & Bro., made by Henry Pearson, Henry Cress, and J. C. Pearson, dated Ap'l 14th, 1856, payable Sept. 1st, 1856, for $22 00; one note made by Henry Pearson and Henry Cress, to the same, for $58 33, bearing date Ap. 15,
1856, payable Nov. 1st, 1856; one note made by James Mc-
107 Hogh to the same parties, for $11 00, dated March, 1856, and payable 6 mos. after date, with 10 per cent.; a note made by E. S. McCaughey, to same, dated Feb'y 1st, 1856, payable 1 day after date, with 10 pr. cent., for $30 00; a note made by Joseph Harmon and Abram Hess, to same parties, dated March 12th, 1856, payable Sept. 1st, 1856, for $84 83, with 10 pr. cent. The said note on Joshua Cushing is secured by a deed of trust on certain real estate therein described, which is also hereby assigned for the same purpose. The said Adams being the trustee named in said of trust, hereby agrees to proceed to sell said property, and apply the proceeds of such sale to the payment of his aforesaid note in case he shall not pay the same at maturity, within 30 days thereafter, if requested by the said Young & Van Klerck; said securities being placed in my hands by the parties mutually for the purpose aforesaid.

JAMES STRAIN,
Agent for the said Adams & Bro., and said Young & Van Klerck.

108 Deposition of Thomas Rutherford, taken at the city of New York, on the 22d day of February, A. D. 1864, before Wm. C. Weed, notary public, and the exhibits attached thereto on behalf of complainants.

Interrogatories.

Interrogatory first. What is your name, age, occupation, and place of residence?

Interrogatory second. Do you know the parties, complainants and defendants, in the caption to these interrogatories mentioned, or either, and which of them? and how long have you known them, respectively?

Interrogatory third. State whether you acted as the agent of complainants in a matter and claim held by them against O. N. Adams & Bro., in the year eighteen hundred and fifty-five, six, seven, eight, and nine, which claim was in the hands of Strain & Bull, attorneys at La Salle, for collection.

Interrogatory fourth. If you answer the third interrogatory that you did act as the agent of complainants in the matter stated, then please to state when, and what you did, and what was said by Strain & Bull, or either of them, respecting the claim, and their efforts to collect the same.

Interrogatory fifth. State whether at any time you, as the agent of the complainants, gave to said attorneys, Strain & Bull, or
109 either of them, any instructions in regard to taking security upon the claim of the complainants against said Orville N. Adams & Bro., and if you did give any instructions, state what such instructions were, and when you gave them, and to whom given.

Interrogatory sixth. State whether you knew or was informed by the attorneys, Strain & Bull, or either of them, that they had taken as security a note and trust deed against any one. If you answer in the affirmative, then state the name of the party or parties against whom such claim was, and the amount thereof, and state fully all you know about the claim, and the taking of the claim, and all you were informed respecting the claim, and whom by.

Interrogatory seventh. Do you know any other matter or thing which may be of any benefit to either party in this suit? If yea, state the same fully and as particularly as though were here interrogated thereto.

SMITH, HART & CLYDE,
Nov. 25th, 1863. *Solicitors for Compl'ts.*

Answers to interrogatories.

Thomas Rutherford, being duly sworn to make true answer to all such questions as shall be asked upon the interrogatories annexed to this commission, without fear or affection to either party, and therein to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

To the first interrogatory on the part of the plaintiff he answers as follows:

My name is Thomas Rutherford; I am 32 years of age; am a merchant; reside in Raymond street, in the city of Brooklyn, State of New York.

To the second interrogatory on the part of the complainant he answers as follows:

I know the complainants, and have so known them since the year 1853. I also know Orville N. Adams, one of the defendants, and have known him since the year 1855.

To the third interrogatory on the part of the complainants he answers as follows:

I had charge of the books and correspondence of the complainants from May, eighteen hundred and fifty-four, to May, eighteen hundred and fifty-seven, at which time Mr. Van Klerck retired from
111 business, and the business was continued by Archibald Young and Hooglan. I continued in charge of the book and corre-

spondence for the complainants after the firm of Archibald Young & Hooglan took the business, and have had charge thereof ever since. The complainants had a debt against Adams & Brother, of La Salle, Illinois, for goods sold, which debt was contracted as follows: six hundred and thirty-two $\frac{29}{100}$ doll's of said debt on the 17th April, 1855, and ten hundred and ninety-six $\frac{31}{100}$ doll's on the 17th September, 1855, as appears by the book of the said complainants. These debts against O. N. Adams & Brother were not paid when due, and in May, 1856, further time was given to them upon their giving security; a new note was taken, dated May 20th, 1856, at six months, for eighteen hundred and twenty-eight $\frac{97}{100}$ dollars, and entered by me upon the books of the complainants. The securities were placed in the hands of Strain & Bull, attorneys at La Salle, Illinois.

To the fourth interrogatory on the part of the complainants he answers as follows:

A short time before the extension and note became due, I sent it to H. Baldwin, then a broker at La Salle, for collection, with instructions to hand it over, if not paid, to Strain & Bull. The note was not paid at maturity, and was placed in the hands of Strain & Bull,
112 attorneys, as complainants were advised. I knew of nothing said by Strain & Bull except from their letters, which will appear from said letters, which I annex to this my deposition and make a part thereof.

To the fifth interrogatory on the part of the complainants he answers as follows:

I gave no instructions to Strain & Bull regarding taking security from Adams & Brother other than what is contained in the letters of the complainants, copies of which are hereto annexed, to which I refer as part of my answer.

To the sixth interrogatory on the part of the complainants he answers as follows:

I had no information from Strain & Bull respecting a note and trust deed against any one taken as security, except the receipt of Mr. Strain and the letters of Strain & Bull in regard to the matter. From such information I know that a note secured by trust deed, given by Joshua Cushing for sixteen hundred dollars, was turned over by O. N. Adams & Brother to the complainants as security, and that it was placed in the hands of James Strain, or Strain or Bull, at that time the complainants' attorneys. I do not know except from the letters of Strain & Bull, and *and* from other information and the correspondence on the part of the complainant, anything personally respecting the claim against the said Cushing. I know that the
113 complainants never did consent, or direct Strain & Bull or any one, to release their lien upon the note and security against Cushing. I know that they never did in any way consent to substituting other security by O. N. Adams & Brother for the note and trust deed against Cushing. I know they never did consent or ratify the act of said Adams in taking a deed from Cushing. I know that the complainants never did receive any advices, by letter or otherwise, from Strain & Bull, or either of them, that they had done any

Interrogatory fourth. If you answer the third interrogatory that you did act as the agent of complainants in the matter stated, then please to state when, and what you did, and what was said by Strain & Bull, or either of them, respecting the claim, and their efforts to collect the same.

Interrogatory fifth. State whether at any time you, as the agent of the complainants, gave to said attorneys, Strain & Bull, or
109 either of them, any instructions in regard to taking security upon the claim of the complainants against said Orville N. Adams & Bro., and if you did give any instructions, state what such instructions were, and when you gave them, and to whom given.

Interrogatory sixth. State whether you knew or was informed by the attorneys, Strain & Bull, or either of them, that they had taken as security a note and trust deed against any one. If you answer in the affirmative, then state the name of the party or parties against whom such claim was, and the amount thereof, and state fully all you know about the claim, and the taking of the claim, and all you were informed respecting the claim, and whom by.

Interrogatory seventh. Do you know any other matter or thing which may be of any benefit to either party in this suit? If yea, state the same fully and as particularly as though were here interrogated thereto.

SMITH, HART & CLYDE,
Nov. 25th, 1863. *Solicitors for Compl'ts.*

Answers to interrogatories.

Thomas Rutherford, being duly sworn to make true answer to all such questions as shall be asked upon the interrogatories annexed to this commission, without fear or affection to either party, and therein to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

To the first interrogatory on the part of the plaintiff he answers as follows:

My name is Thomas Rutherford; I am 32 years of age; am a merchant; reside in Raymond street, in the city of Brooklyn, State of New York.

To the second interrogatory on the part of the complainant he answers as follows:

I know the complainants, and have so known them since the year 1853. I also know Orville N. Adams, one of the defendants, and have known him since the year 1855.

To the third interrogatory on the part of the complainants he answers as follows:

I had charge of the books and correspondence of the complainants from May, eighteen hundred and fifty-four, to May, eighteen hundred and fifty-seven, at which time Mr. Van Klerck retired from
111 business, and the business was continued by Archibald Young and Hooglan. I continued in charge of the book and corre-

spondence for the complainants after the firm of Archibald Young & Hooglan took the business, and have had charge thereof ever since. The complainants had a debt against Adams & Brother, of La Salle, Illinois, for goods sold, which debt was contracted as follows: six hundred and thirty-two $\frac{29}{100}$ doll's of said debt on the 17th April, 1855, and ten hundred and ninety-six $\frac{31}{100}$ doll's on the 17th September, 1855, as appears by the book of the said complainants. These debts against O. N. Adams & Brother were not paid when due, and in May, 1856, further time was given to them upon their giving security; a new note was taken, dated May 20th, 1856, at six months, for eighteen hundred and twenty-eight $\frac{97}{100}$ dollars, and entered by me upon the books of the complainants. The securities were placed in the hands of Strain & Bull, attorneys at La Salle, Illinois.

To the fourth interrogatory on the part of the complainants he answers as follows:

A short time before the extension and note became due, I sent it to H. Baldwin, then a broker at La Salle, for collection, with instructions to hand it over, if not paid, to Strain & Bull. The note was not paid at maturity, and was placed in the hands of Strain & Bull,
112 attorneys, as complainants were advised. I knew of nothing said by Strain & Bull except from their letters, which will appear from said letters, which I annex to this my deposition and make a part thereof.

To the fifth interrogatory on the part of the complainants he answers as follows:

I gave no instructions to Strain & Bull regarding taking security from Adams & Brother other than what is contained in the letters of the complainants, copies of which are hereto annexed, to which I refer as part of my answer.

To the sixth interrogatory on the part of the complainants he answers as follows:

I had no information from Strain & Bull respecting a note and trust deed against any one taken as security, except the receipt of Mr. Strain and the letters of Strain & Bull in regard to the matter. From such information I know that a note secured by trust deed, given by Joshua Cushing for sixteen hundred dollars, was turned over by O. N. Adams & Brother to the complainants as security, and that it was placed in the hands of James Strain, or Strain or Bull, at that time the complainants' attorneys. I do not know except from the letters of Strain & Bull, and *and* from other information and the correspondence on the part of the complainant, anything personally respecting the claim against the said Cushing. I know that the
113 complainants never did consent, or direct Strain & Bull or any one, to release their lien upon the note and security against Cushing. I know that they never did in any way consent to substituting other security by O. N. Adams & Brother for the note and trust deed against Cushing. I know they never did consent or ratify the act of said Adams in taking a deed from Cushing. I know that the complainants never did receive any advices, by letter or otherwise, from Strain & Bull, or either of them, that they had done any

act in the least to impair the lien of the complainants to the security in the note and trust deed of Cushing, and any way released the same, or done any act by which the lien would be prejudiced. I know that the complainants, in not realizing the money on the claim against O. N. Adams & Brother, had great fears as to the security held by their attorneys, Strain & Bull. I annex to this my deposition several letters received by the complainants from Strain & Bull, and also copies of letters from the complainants to Strain & Bull. Of the latter I wrote all except two, which were dated December 8, 1859, and December 29, 1859, and were written by Archibald Young, one of the complainants. I annex the said letters and copies to show the correspondence between the complainants and Strain & Bull in relation to the claim against O. N. Adams & Brother, and the security taken from time to time, which said letters and copies I request to be marked
114 from number one to seventeen, inclusive. The letter of Strain & Bull, marked Exhibit 6, purporting to be dated Jan'y 2d, 1856, was received in answer to a letter of the complainant dated December 29th, 1859.

To the seventh interrogatory on the part of the complainants he answers as follows:

I do not know anything further in this suit unless it is the fact that Strain & Bull did not answer the letter of June 1st, 1860, and that the complainants received by mail an abstract of the property covered by the trust deed of Cushing, which abstract was enclosed to the address of the complainants without any letter, and which abstract, I believe, was sent by Strain & Bull; said abstract is now, I believe, in the hands of complainants' attorney at Chicago. The complainants never did receive any reply or statement from Strain & Bull, as requested in their letter of June 1, 1860. I know that the complainants did not answer the letter of Strain & Bull dated April 7, 1859, and on the 12th day of April, 1859, sent an order by Smith & Dewey on Strain & Bull, requesting them to deliver all the papers and securities in the case of O. N. Adams & Brother to the said Smith & Dewey. I know that afterwards the complainants, not being satisfied, sent an order on Strain & Bull for the papers and securities. A copy of said order is hereto annexed, marked Exhibit No. 17.

THOMAS RUTHERFORD.

Sworn to before me this 22d day of February, 1864.

WILLIAM C. WEED,
Notary Public, New York.

115 NEW YORK, *Feb'y 22d*, 1864.

The annexed exhibits, numbered eight (8) to seventeen (17,) inclusive, are the copies of letters from complainants to Strain & Bull, which are referred to in answer to the sixth interrogatory in the commission hereto annexed, and by me signed.

THOMAS RUTHERFORD.

WILLIAM C. WEED, *N. P.*

Exhibit 8.

NEW YORK, *May* 19, '57.

Messrs. Strain & Bull, La Salle, Ill's:

GENTS.: We have heard it intimated that O. N. Adams had got the start of us on the deed of trust on the Cushing property, and that our claim was not so well secured as we supposed. Please give this matter your immediate attention, and if you have not already the claim secured beyond a doubt, put an attachment on the property and commence suit in chancery, or in whatever way you may deem best for our interest.

Please let us hear from you by return mail as to the present condition and prospects of this claim.

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLERK.

Exhibit No. 8. Thomas Rutherford.

116 *Exhibit* 9.

NEW YORK, *April* 12, 1859.

Mess. Strain & Bull, La Salle, Ill's:

GENT.: Please deliver to Mess. Smith & Dewey, or order, all the papers and notes which you may have on our claim against O. N. Adams & Bro. which you have for collection for our ac't.

Also the judgment or note against Geo. S. Fisher, of Ottawa, Ill's, and oblige,

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 9. Thomas Rutherford.

Exhibit 10.

NEW YORK, *July* 20, 1859.

Mess. Strain & Bull, La Salle, Ill.:

GENT: Please inform us what has been done with the claim *vs.* O. N. Adams & Bro. Have you deeded the land to us, and what is the prospect of making anything out of Adams on the notes? Have you the old collateral notes, or did you surrender them when you made the last arrangement?

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 10. Thomas Rutherford.

117 *Exhibit* 11.

NEW YORK, *July* 28, 1859.

Mess. Strain & Bull, La Salle, Ill.:

GENT.: Your favor of 23d inst. is at hand with deed of of land for ac't of our claim against O. N. Adams & Bro. Can you not make something out of the old collateral notes?

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

P. S. Have you succeeded in doing anything with Fisher, at Ottawa?

(Signed) A. Y. & V. K.

Exhibit 11. Thomas Rutherford.

Exhibit 12.

NEW YORK, *Dec.* 2, 1859.

Mess. Strain & Bull, La Salle, Ill's:

GENT.: Please inform us how our claim against O. N. Adams & Bro. at present stands. Did you take the land at any given price which you sent us a deed for, or what was the understanding in regard to it? Let us hear from you by return mail with all the particulars.

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 12. Thomas Rutherford.

118 *Exhibit* 13.

NEW YORK, *Dec.* 8, 1859.

Mess. Strain & Bull, La Salle, Ill.:

GENT.: In renewing our business with you in relation to our claim against O. N. Adams & Bro., which you have had the charge of, we are not altogether satisfied with matters as they appear to us now. In the first place, you as our att'ys, advise the taking of a certain note or notes secured by deed of trust on property amply sufficient to pay our claim. It seems that O. N. A. as trustee settles this matter with himself so that you say it was necessary for you to take further proceedings to secure our claim. You then write us that you got judgment against O. N. A. & Bro., and in course of time discover that it is got in a court which has no jurisdiction; you then figure for some time till the first thing we discover, you have taken a piece of land sold a short time since for *three dollars and some cents*, and then again for one. hundred dollars. We intend that you shall make this whole matter plain to us, or we shall try and see if *you* are *responsible.*

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 13. Thomas Rutherford.

119 *Exhibit* 14.

NEW YORK, *Dec.* 29, 1859.

Mess. Strain & Bull, La Salle, Ill.:

GENT.: Yours of the 23d is received. In reply, we think you do not or do not wish to comprehend our writing of the 8th inst. to be more plain, we think you, in connexion with O. N. Adams & Bro., have been trying to pay us off in worthless land for a claim against O. N. Adams & Bro. which you could have made without any trouble;

and we intend to give you an overhauling in this matter. We mentioned the price of the land in ours of the 8th, to show you that we had been looking into your transactions.

Yours truly,

(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 14. Thomas Rutherford.

Exhibit 15.

NEW YORK, *June 1st*, 1860.

Mess. Strain & Bull, La Salle, Ill.:

GENT.: Some time since we received a letter from you with your bill of charges for services in cases against O. N. Adams & Bro. and G. S. Fisher, for which you drew on us, but which draft we did not pay, for the reason that you had been guilty of neglect of duty, if
120 nothing worse. We may be wrong in our conclusions; and if so, we shall be very happy to change our minds and do what is right and pay you for all your services; but as we feel, and as the case stands, it is for your interest as well as ours that we should have a better understanding.

In order to arrive at more definite conclusions, we should like to have you explain to us how the claim of O. N. Adams & Bro. stands at present, as they have stated to us that they had settled with you for our claim against them, and, as you have never intimated that such was the case, we have had reason to doubt. We have reviewed all your letters and can find no intimation that you ever received the land in Knox co. for any amount whatever, only as collateral for their indebtedness, and as we understood, in the extension which you gave them when they deeded the land to you, Mr. Strain, the whole transaction was only as collateral to the previous note of some $1,800, and that in no way cancelled our claim as it then stood, and that you still have the old note with the collaterals without any bar to their being collected. If we are right or wrong in this, will you please inform us. When the original note with the deed of trust were put in your hands by our agent as security for their note of $1,800, was the deed of trust legally assigned and put on record? If not, you evidently neglected your duty.

If this deed of trust was put on record, or if the deed of trust still stands not satisfied, and it cannot be legally, why cannot
121 the money be made on that at once, as the property is still very valuable, as we suppose.

It would not be pleasant from what has passed between us to continue to have you attend to our interest in this matter, and yet if we have done you injustice in arriving at wrong conclusions we shall be very happy to take back all we have said and pay what we legally owe; but if you have done what (it seems to us) would render you liable for the debt, of course it would not be right for us to pay.

Please answer by return mail, and state precisely how the matter stands and what we have as security, and we will respond to you at once and say what is right and proper.

Is the deed of trust a good and valid claim on the Cushing Shipping Port property, and is the Knox co. land taken for any consideration?

Yours, resp'y,
(Signed) ARCH'D YOUNG & VAN KLEEK.

P. S.—If we have a claim on the Cushing property, say what is about its value.

Exhibit 15. Thomas Rutherford.

Exhibit 16.

NEW YORK, *July* 11, 1860.

Mess. Strain & Bull, La Salle, Ill's:

GENT.: We received from you a few days since, an abstract
122 of the property in trust deed of Joshua Cushing to O. N. Adams, but no letter. One Mr. E. Young has returned from our State, and informs us that you had a statement all written out of the case *vs.* O. N. Adams & Bro., and as we have not received it, we presume you have not sent it. Will you please write us by return mail in answer to our letter of June 1, '60.

Yours, truly,
(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 16. Thomas Rutherford.

Exhibit 17.

NEW YORK, *Sept.* 13, 1860.

Mess. Strain & Bull, La Salle, Ill.:

GENT.: Please deliver to Mess. E. S. Smith & Co., or order, all the papers relating to our claim ag't O. N. Adams & Bro., in your hands and oblige

Yours, resp'y,
(Signed) ARCH'D YOUNG & VAN KLEEK.

Exhibit 17. Thomas Rutherford.

123 NEW YORK, *Feb'y* 22*d*, 1864.

The annexed exhibits numbered one (1) to seven (7) inclusive, are the letters received from Strain & Bull, which are referred to in answer to the sixth interrogatory, in the commission hereto annexed and by me signed.

THOMAS RUTHERFORD.

WILLIAM C. WEED, *N. P.*

Exhibit 1.—*Thomas Rutherford.*

LA SALLE, *Feb.* 25*th*, 1857.

Mess. Archibald Young & Van Kleek:

GENT: Yours of a late date making inquiry as to your claim *vs.* O. N. Adams & Bro., has been rec'd, and in reply we have to say that we have only collected $73 69, which please find indorsed. Some

time after Mr. O. N. Adams made the assignment of the trust deed on the Cushing Shipping Port property to you, he bought the same property from Cushing, and now seems disposed not to sell it for your benefit under the trust deed, as he says he has to pay you the money it is no object to him to sell his own property under a trust deed to do so, and as he is the trustee, if he refuses he can only be compelled to do so in chancery. He has, however, promised us to turn over good paper this week amply sufficient to secure your claim in addition to what we already hold, upon which he says the money can be realized in a short time. If this is not done we will imme-
124 diately commence such proceedings as may be necessary to collect your money in the shortest possible time. By a misunderstanding between ourselves, your former letter was not answered, as we had supposed it was. We think there is no danger of a loss on your claim, and we will do the best we can to make the money soon.

Yours, truly,

STRAIN & BULL.

Exhibit 2.—Thomas Rutherford.

LA SALLE, *May 27th*, 1857.

Mess. Arch'd Young & Van Kleek:

GENT: Yours of the 19th inst. has been rec'd, and in reply we have to say that some time after O. N. Adams placed the trust deed on the Cushing property in our hands for your benefit, he purchased the land from Cushing and then refused to proceed as trustee to sell the same and make the money, and as we could only compel him to do so by bill in chancery, we chose to bring suit against the firm on the note, which we did, and obtained a judgment at the April term of our court. A few days since we had an execution issued on the judgment and levied on his stock of goods. He now asks us to release the goods and proposes to turn out on the execution unincumbered real estate. If he
125 does so we will have to take it, as the law requires the "personal property to be last taken in execution." If the property is not clear we will not be compelled to take it. We have been giving the matter close attention, and, we think, have the claim undoubtedly secure. In case Mr. Adams should not turn out real estate, and we retain the levy on the goods, we wish you to instruct us whether we shall press a sale immediately, or whether we may then show a little leniency. He may be able to pay the money before long, but if he cannot, and we proceed to sell for so large an amount, it will cause him a considerable sacrifice. The reason why we chose to sue at law rather than proceed by bill in chancery, was that we thought the former more expeditious, and would also give us a lien on his whole property, instead of on the Shipping Port property only.

Yours truly,

STRAIN & BULL.

126 *Exhibit 3.—Thomas Rutherford.*

LA SALLE, *Sept.* 14*th*, 1857.

Mess. Arch'd Young & Van Kleek:

GENT: Yours of the 10th inst. enclosing letter of O. N. Adams to your Mr. Young is this morning rec'd, and in reply we have to say the judgment we obtained against him in the recorder's court has not been set aside, but the supreme court have decided the court to be unconstitutional; and although we think this decision is wrong and will be changed by the supreme court on a rehearing, practically it suspends the judgment so as not to be available. We obtained your judgment at the April term, and at the June term of the supreme court the decision above referred to was made. Since then there has been no court in which we could sue, as our county court has jurisdiction only to the extent of $1,000. Mr. Adams, as we informed you some time since, having bought the land embraced in the trust deed of the Shipping Port property, and being the trustee himself, refuses to proceed with the execution of the trust, and as we could only compel him to do so by bill in chancery, we preferred to take what seemed to be a shorter course. We sued him at law, obtained a judgment, and levied an execution on his property, but all of which has been rendered null and void, if the decision of the supreme court is to stand. As the matter now stands we can only do one of two
127 things, bring suit to the November term of our circuit court, or settle the matter with Adams some way. We have done all we could, and have had a careful watch over the matter all the time.

We would have written you sooner but Mr. Adams has been all the time promising to settle the matter in some satisfactory manner, and we have been waiting in hopes of being able to report something satisfactory to you. We do not know what to think of Mr. A.'s present proposition, but one of us will see the land of which he speaks in the next 24 hours, and if the title is perfect, and the land is an ample security for the debt, it will perhaps be the best thing that can be done to take it.

We are sorry to say that we think Mr. A. has not acted honestly, nor honorably in this matter, and has placed us in an exceedingly unpleasant position by the course he has pursued. He is, however, not in as bad a pecuniary condition as he represented himself to be, and although his property has been sold by the marshal, and could only be made available to creditors by redeeming from those sales, yet if redeemed it would be worth several thousand dollars over and above the redemption money.

As soon as we have ascertained the facts about the Knox county land, we will advise you as to what we think will be the best course to pursue.

Yours, truly,

STRAIN & BULL.

128 *Exhibit* 4.—*Thomas Rutherford.*

LA SALLE, *Dec.* 19*th*, 1857.

Mess. Arch'd Young & Van Kleek:

GENT: Yours of the 2d and 14th have been rec'd, and by some oversight yours of the 2d was not answered as it should have been.

In reply we have to say that some time since our Mr. Bull went to Knox county and made a personal examination of the land and the title thereto, which Mr. Adams proposed to turn over as security for your debt. The land we found to be high and dry rolling land, with some timber on it, valued by the people in that vicinity at $15 per acre, and by Mr. A. at $20. We have taken a deed of the land to our Mr. Strain, with a bond back to Mr. Adams, conditional to recovery to him on his paying your debt, one half in 12 and the balance in 18 months, with 10 per cent. The title is all right, and we think the security is sufficient and indeed ample. We have the option to keep the land absolutely or sue him for the money in case it is not paid when due.

This land we hold in trust for you.

Yours, truly,

STRAIN & BULL.

129 *Exhibit* 5.—*Thomas Rutherford.*

LA SALLE, *Ills.*, *Ap'l* 7*th*, 1859.

Mess. Arch'd Young & Van Kleek, New York:

GENTLEMEN: In answer to your letters of inquiry concerning claims *vs.* O. N. Adams, we would say that we have delayed our answer, in hopes of being able to make a final report satisfactory to you, and one that would finally settle the matter as far as we were concerned. Over one year ago we took the NW. quarter of sect. 8., T. 11, R. 4 E. 4th p. m., by a deed out and out to our Mr. Strain. The land was then considered worth from $2,000 to $2,500. Our Mr. Bull went upon the land and found the same to be good farming land, but owing to the scarcity of money in this region, the same would not now sell for near its value for cash. We gave Mr. Adams a contract to reconvey to him the land upon certain conditions, a copy of which contract we herewith send you. Mr. Adams has failed, and says he must utterly fail in living up to this agreement. He now proposes to give up the land, and all interest in the same to you, and leave the matter with you to say whether he can redeem it at all or not.

He wants you to consent to give up all the papers and claims you have against him, except this agreement for the purchase of said land, a copy of which we send to you. We suppose the land might now be sold, upon the usual time, for $12½ per acre. If you
130 wish to accept of that proposal we will send you a deed from our Mr. Strain for the land, together with a certified abstract of the title of the land. If you want a deed for the land, you will

please send us the name or names of the person or persons to whom the deed shall be made.

Awaiting your reply we remain yours truly,

STRAIN & BULL,
p'r BULL.

Exhibit 6.—*Thomas Rutherford.*

LA SALLE, *Jan'y 2d*, 1856.

Mess. Arch'd Young & Van Kleek:

GENTS: Your very interesting favor of Dec. 29th is at hand and contents noted. I might, with a great deal of propriety, tell you to go to hell, or some other warm climate, and perhaps would do so, did I not think you needed cooling off, rather than heating, about this time, even if it is cool weather. I shall not waste time or words in telling you that your charges and insinuations are severally and collectively false in every particular, and I should not trouble myself to reply to your letters, if I did not think and know that you are laboring under a mistake about the matter, either upon erroneous information, or else from a stubborn intention of be-
131 ing mistaken. Although I am somewhat dull of comprehension, still I fully understood the purport of your 8th Dec'r letter, and I have improved the time since in ascertaining the condition of the title to the land turned out to you. I find the title, or at least the certified abstract thereof, shows that the title is perfect in you. Now as to the quality of the land. It is true the land was sold once for $352\frac{1}{2}$, which was in 1849, when it belonged to the old soldier, J. W. Gibson, of Bullock co., Geo'a, and it was then sold for taxes for that am't. It is also true that the soldier quit-claimed his interest for $100, on account of the outstanding tax title, and the distance that he lived from the land. He knew nothing of the land, and supposed, doubtless, that the tax title had cut off all of his interest the land.

It frequently happens that persons, for a very little *little* money, obtain a quit-claim deed from the old soldier, or his heirs, for very valuable land situated in the military tract district, which they have not seen for years, if ever, know nothing of its value, and have not paid the taxes for a long time, and suppose for that reason they have lost all title to the land. This piece of land was obtained in that manner, but that does not lessen its real value. I was on the land in person, or at least land which was represented to me as being the land, and which, from its position, I have no doubt was the land deeded to you. I found the land to be dry, rolling land, with some timber on it, one corner of it touching a fine stream of living water, and
132 surrounded by farms under a high state of cultivation. I considered the land worth the amount of the debt, and still think it was at that time. We still hold O. N. Adams & Bro.'s note, and Cushing's note; have not applied to you for fees for the reason that we supposed Adams would redeem the land within the specified time, and we could then pay ourselves and remit you the balance. As he has

not redeemed the land, we shall be obliged to draw on you for fees, and perhaps use the money in litigating with you. I have been this particular and lengthy for the purpose of enabling you arrive at more just conclusions than your letters would seem to import you now hold, nor notwithstanding a litigation with our clients would be unpleasant; still we do not fear the results as far as we are concerned; and if you are advised that it is best for you to take the course you intimate, all I have got to say for your consolation is that you had better go ahead. It is a little strange that you should think we were conniving with Adams to cheat you, and that Adams should entertain the bitterest of feeling toward us, because we should insist upon a forfeiture of that land to you, and when he, at the time that arrangement was made, was hardly on speaking terms with us. We would prefer, of course, to have you perfectly satisfied with the arrangement or settlement of this matter that we have made, but if you are not we have the satisfaction of knowing that we are not guilty of any of the
133 unjust and dishonorable motives with which you have charged us.

Yours,

E. F. BULL, *of Strain & Bull.*

Exhibit No. 7.—Thomas Rutherford.

LA SALLE, *July* 23*d*, 1859.

Mess. Arch'd Young & Kleek, New York:

GENTLEMEN: Yours of 28th inst. at hand. Enclosed please find deed from our Mr. Strain to you for premises taken of Adams. The title is perfect in you, we believe.

There is a poor prospect of making anything out of Adams at present aside from the land. We still hold the old collateral notes and the old notes from Adams.

Yours, &c.,

STRAIN & BULL.

This deed was made out and sent to recorder's office some time since.

S. & B.

134 On the hearing of said cause the defendants read in evidence the following testimony, to wit:

135 The report of testimony of James Strain before Henry W. Bishop, esq., master in chancery, is as follows, to wit:

Circuit court of the United States of America, northern district of Illinois.

ARCHIBALD YOUNG *et al.*
vs.
JOSHUA CUSHING *et al.* } In chancery.

Pursuant to an order made in the above entitled cause (in this court) in the above entitled cause on the 27th day of July, A. D. 1863, wherein and whereby, among other things, it was referred to the undersigned, H. W. Bishop, jr., a master in chancery of this court, to

take proofs in said cause, I, Henry W. Bishop, jr., a master in chancery as aforesaid, do hereby report that on the 18th day of November, A. D. 1863, I was attended by James Strain, the witness produced before me, and by who appeared for Mess. Walker & Dexter, the att'ys of the respondents, and Mr. Clyde, who appeared for E. S. Smith, esq., the solicitor for the complainants, and the said James Strain being first duly cautioned and sworn to make true answers to such questions as might be put to him under the direction of the said master upon examination made answer as follows :

Int. 1st. What is your name and residence?

Answer. My name is James Strain; I reside in Monmouth, Warren county, Illinois.

Int. 2d. Are you acquainted with the parties to this suit?

136 Answer. I have no acquaintance with the complainants of a personal nature. I have had business correspondence with them.

Int. 3d. How long have you had that acquaintance with them?

Answer. I have had business acquaintance with Archibald Young & Co. since 1856. Have been acquainted with Adams and Cushing since the fall of '51.

Int. 4th. Do you know anything of the business transactions between the defendant Adams and the complainant since 1856?

Answer. About May, 1856, a young man, calling himself Eber Young, called at my office, at La Salle, with a claim in favor of complainants against Adams & Bro. of about $1,800, (note marked Exhibit A. attached to Bull's deposition. This cause is the claim I refer to. The note was placed in my hands by the parties, to be held as specified in Exhibit E, of Bull's deposition, and certain collaterals were also placed in my hands as specified in the same exhibit. The trust deed attached to Bull's deposition, marked Exhibit B, was also placed in my hands as collateral security for the payment of $1,800 claim (note.) The assignment of that trust deed from Cushing to Adams is also contained in Exhibit E. A portion of the smaller notes

137 turned over as collateral by Adams were collected and applied to Adams & Bro. indebtedness to Young and Van Klerk, The amount collected was small. Some time after the assignment of the notes and trust deed was made by Adams, as stated in Exhibit E,—how long after I have now forgotten—I was informed by Adams that he had taken an absolute conveyance of the property described in the trust deed in Exhibit B of Bull's deposition, being the same premises therein described from Cushing to himself, which are the same premises described as having been assigned by Adams to me as collateral security. In the same conversation, Adams informed me that some of his creditors who had obtained judgments against him in the United States circuit court in Chicago, had caused executions to be levied on the property described in the trust deed mentioned as the property of Adams. I charged Adams with bad faith in having taken an absolute reconveyance of the property, and demanded that he should proceed with the execution of the trust deed. He refused to execute the trust, partly on the ground that, having united the trust

estate with the fee simple, he was not compelled to do so, and partly upon the ground that the property having been levied upon by his creditor, he could not do so. The assignment of the trust deed of Cushing and wife to Adams, made by Adams to me, not
138 having been recorded, I conceived that our security was lost, and demanded of Adams that he should give other collateral security, and he accordingly executed to me the paper marked Exhibit A in Bull's deposition, as a substitute for the other security. The money not having been paid by Adams according to the terms of the agreement marked Exhibit A of Bull's deposition, I conveyed the Knox county land to the complainants. The deed was executed at one of the times Eber Young was at my office. I sent it to the recorder with instructions to deliver it to him. It was returned to me and recorded in Knox county. Some time after Eber Young called at my office and got the deed, since which time I have not seen it.

(So much of the last answer as is contained in the words "substitute for the other security," objected to, for the reason that the agreement was in writing.)

Int. 5th. Was the assignment marked Exhibit E in Bull's deposition filed in his cause ever recorded?

Answer. It was not.

Int. 6th. At the time you took the deed of the Knox county land of O. N. Adams & Bro., did you not take deed of said premises as a substitute and in place and stead of the trust deed of Cushing and wife to Adams, assigned to you as collateral security, as stated in Exhibit E, with the understanding that the premises described in said trust deed was to be released.

139 (Objected to, first, because it is leading; second, for the reason that the agreement between the witness and O. N. Adams was in writing.)

Answer. I did take the Knox county land as a substitute and in lieu of the other security. I have no remembrance of any agreement between Adams and myself, that the property described in the trust deed of Cushing and wife to Adams, which had been assigned to me, should be released; but it was understood, both by Adams and myself, that that property had been placed beyond my reach as security by his act and by being levied upon by his creditors, and its being so lost, was the reason why I demanded other security.

Int. 7th. What was the consideration paid to Adams for the deed of Adams to the Knox county land?

(Objected to, for the reason that the agreement which was made between the witness and O. N. Adams is in writing as already testified to; second, that the consideration paid for said land is expressed in said written agreement.)

Answer. The consideration was the indebtedness of Adams & Bro. to the complainants. The deed, however, of the Knox county land was made to me by Chauncey K. Adams and wife—said Chauncey is a brother of O. N. Adams—and this was by agreement between O. N. Adams and myself, the title being in Chauncey.

Cross-examination of James Strain by Mr. Clyde:

Cross-int. 1st. State whether or not the trust deed of Cushing and wife to Adams or the assignment of the same to you, or the note of Joshua Cushing attached to Bull's deposition, and marked Exhibit C, were ever delivered up by you to O. N. Adams or to O. N. Adams & Bro.

Answer. They were not delivered.

140 Cross-int. 2d. Did you ever as the agent of the complainant release to O. N. Adams or to any other person any securities received by you as collateral to the note of O. N. Adams & Bro. attached to Bull's testimony, and marked Exhibit D?

Answer. My impression is that some of the small notes were returned to Adams, but the Cushing note secured by the trust deed was note returned.

Cross-int. 3d. Had you any knowledge of the fact that Adams had taken deed of the land in fee from Cushing, and described in the trust deed of Cushing, until after he had so taken it, or had you any information that he intended taking it until after he had taken it?

Answer. I had not any such knowledge or information until after he had taken it.

Cross-int. 4th. Did the complainants, to your knowledge, ever release any security derived from the trust deed and note of Cushing to O. N. Adams & Bro.?

Answer. They did not to my knowledge, except as released by my act as their agent, as before stated.

Cross-int. 5th. If by your acts any securities held by you for the complainants were in any way released, did it not result from your belief that O. N. Adams by his acts had jeopardized or destroyed such securities?

Answer. The reason why I took the deed of the Knox county land was because he had by his acts, as I believed, destroyed our security on the Cushing trust deed. I am not certain why we delivered up the small note to Adams, but it was either because we considered the notes worthless and not available as security, or for the reason that I deemed the Knox county land as ample security.

141 Cross-int. 6th. Was there at any time any positive agreement on your part to deliver up to Adams the Cushing note or mortgage before the debt of O. N. Adams & Bro. to the complainants had been fully paid?

Answer. There never was any agreement to that effect between us, on my part. He (Adams) called on me several times for the note; I uniformly refused to deliver them for the reason that a misunderstanding had arisen between him and the complainants with regard to the business between them.

Cross-int. 7th. Was not the deed of the Knox county land executed and delivered to you before Eber Young came to La Salle, as spoken of by you in your direct examination?

Answer. My impression is that it was executed and in my possession before he came there.

Cross-int. 8th. You have already stated that Adams called upon you

several times for the Cushing note and trust deed: now state whether he so called on you for said note and trust deed at the time of the delivery of the deed of the Knox county land, or whether it was since that time; and if so, how long after the execution of said deed was it before he called upon you?

Answer. The first time that I recollect of Adams calling on me for the Cushing note was after the execution by me of the deed marked Exhibit D attached to the answer of O. N. Adams to this cause; I think he may have called upon me before that time (before I executed the deed to the complainants) for the Cushing note; he called upon me for the other note (the note of O. N. Adams & Bro. to the complainants) after that time.

Cross-int. 9th. When Adams called on you for the Cushing note did he say anything about having collected the amount of said
142 note from Cushing, and if so, what did he say?

Answer. The said Cushing had paid the said note to him.

James Strain re-examined by Mr. :

Int. 1st. At the time Adams called on you for the Cushing note, as stated in your answer to the last cross-interrogatory, what, if anything else, was said by Adams at that time in relation to that said note?

(Objected to.)

Answer. He requested me to deliver it to him, and stated that at the time Cushing paid it to him he (Cushing) did not know that the note had been transferred to me.

(So much of the last answer as relates to what Adams said about Cushing's knowledge of the transfer of said note is objected to by complainant's counsel.)

JAMES STRAIN.

Subscribed Nov. 18, 1863.

H. W. BISHOP, Jr., *Master, &c.*

All of which is respectfully submitted.

H. W. BISHOP, Jr.,
Master in Chancery United States Circuit Court,
Northern District of Illinois.

Indorsed: Filed Nov. 18, 1863.

W. H. BRADLEY, *Cl'k.*

143 The defendants also read in evidence from the record of the proceedings of said court on the common law side thereof—

1st. The judgment of said court in the case of Lycurgus Edgerton *et al.* against Orville N. Adams and Kneeland T. Adams, and the alias writ of fieri facias issued thereon and return on same, which said judgment, writ of fieri facias and return are in words and figures following, to wit:

United States circuit court for the northern district of Illinois.

WEDNESDAY, *July 9th, A. D.* 1856.

Present, the Hon. John McLean, presiding judge, the Hon. Thomas Drummond, associate.

LYCURGUS EDGERTON, NATHANIEL S. DOAN, William H. Dunning, John G. Wright, and Abraham B. Wetmore } Cognovit.
vs.
ORVILLE N. ADAMS, KNEELAND T. ADAMS.

Now at this day come the parties by their attorneys, and
144 the plaintiffs by their attorneys file their declaration, and the defendants by their attorneys file their cognovit, and also their warrant of attorney under the defendants' hands and seals, which is adjudged sufficient by the court, in which they confess a judgment in favor of the plaintiffs for the sum of thirty-seven hundred and thirty-two dollars and thirty-three cents. It is thereupon considered and adjudged by the court that the plaintiffs have and recover of and from the said defendants the said sum of thirty-seven hundred and thirty-two dollars and thirty-three cents, their damages so as aforesaid confessed, together with their costs by them in this behalf expended, amounting to the sum of twenty-one dollars and seventy-five cents, and that they have execution therefor.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you again that of the goods and chattels, lands and tenements of Orville N. Adams and Kneeland T. Adams, in your district, you cause to be made thirty-seven hun-
145 dred and fifty-four dollars and eight cents, which Lycurgus Edgerton, Nathaniel S. Doane, William H. Dunning, John G. Wright, and Abraham B. Wetmore, lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against them for damages which they had sustained as well by occasion of the non-performance of certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, whereof said defendants are convicted, as appears to us of record, and have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiffs for their damages aforesaid, and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Indorsed: No. 896 circuit court United States northern district of Illinois.

Lycurgus Edgerton *vs.* Orville N. Adams and Kneeland T.
146 Adams.

Alias fi. fa. damages	$3,752 33
Costs	21 75
Collect	3,754 08
Alias fifa	1 35
	3,755 43

Judgment rendered July 9th, 1856.

This execution came to hand at 4 o'clock p. m. this 15th day of July, 1857.

IRAM NYE. *U. S. Marshal.*
By E. A. BENNETT, *Dept.*

By virtue of the within execution I have this day levied on all the right, title, and interest of O. N. and K. T. Adams in and to the following described real estate to satisfy the same, to wit: 1st. The east 20 feet of lot 12, in block 120, in the city of La Salle, county of La Salle, and State of Iliinois; 2d. Also 15 acres of land in the southwest corner of the northeast quarter of section 10, township 33 north, range 1 east of the 3d principal meridian, being the same land deeded to him by Harriet Brown; 3d. Also the undivided one-fourth of the south half of section 29, township 34 north, range 1 east; 4th. Also the northeast quarter of section 31, township 34 north, range 1 east; 5th. Also the northwest quarter of section 28, township 34 north, range 1 east; 6th. Also southwest quarter of section 29, same town and range; 7th. Also the northeast quarter of the northeast
147 quarter of section 27, town 33 north, range 1 east; 8th. Also the southeast quarter of section 24, town 33 north, range 1 east; 9th. Also the east half of the northwest quarter of section 19, town 33 north, range 2 east of the 3d principal meridian; 10th. Also all that part of the northwest quarter of section 23, town 33 north, range 1 east of the 3d principal meridian, which lies on the west side of the Illinois Central Railroad, and on the south side of the Illinois river; 11th. Also the southwest quarter of section 23, same town and range; 12th. Also the southeast quarter of section 22, in same town and range—all situated in the county of La Salle, and State of Illinois, this 15th day of July, 1857.

IRAM NYE, *U. S. Marshal Nor. D't Ill.*

After giving notice as the law requires, I did, on this 25th day August, 1857, offer the within-named property for sale at the courthouse door, in the town of Ottawa, county of La Salle and State of Illinois, and James M. Walker, as trustee for plaintiffs in 3 executions which are satisfied by this sale, having bid for each tract the amount below set forth, and they being the highest and best bids made, the same were struck down and sold to him at the following prices, to wit:

148 For the 1st named tract, the east twenty feet of lot twelve (12,) block one hundred (120) and twenty, twenty-one hundred dollars..... $2,100 00
For tract No. 2, of ten (10) acres, one thousand dollars... 1,000 00
For tract No. 3. No bid.
For tract No. 4. No bid.
For tract No. 5, NW. ¼, sec. 28, T. 34 N., R. 1 E., two thousand dollars..... 2,000 00
For tract No. 6. No bid.
For tract No. 7, NE. ¼ of NE. ¼, sec. 27, T. 33 N., R. 1 E., two thousand dollars..... 2,000 00
For tract No. 8. No bid.
For tract No. 9. No bid.
For tract No. 10, part NW. ¼, sec. 23, T. 33 N., R. 1 E., one thousand dollars..... 1,000 00
For tract No. 11, SW. ¼, sec. 23, T. 23 N., R. 1 E., one thousand dollars..... 1,000 00
For tract No. 12, SE. ¼, sec. 22, T. 33 N., R. 1 E., nine hundred and sixty dollars..... 960 00

Making in all ten thousand and sixty dollars..... 10,060 00

Therefore this execution is returned satisfied in full, and the balance of proceeds applied on executions Nos. 895 and 897.

IRAM NYE,
Late U. S. Marshal, Nor. D't Ill.

Indorsed: Filed June 14th, 1858.

WM. H. BRADLEY, *Clerk.*

2d. The judgment of said court in the case of Henry C. Bowen *et al* against Orville N. Adams and Kneeland T. Adams, and the alias writ of fieri facias issued thereon and the return of the same; which said judgment, writ of fieri facias, and return are in the words and figures following, to wit:

149 Circuit court of the United States for the northern district of Illinois.

TUESDAY, *July 15th, A. D.* 1856.

Present, the Hon. John McLean, presiding judge; present, the Hon. Thomas Drummond, associate judge.

HENRY C. BOWN, THEODORE MCNAMEE, Samuel P. Holmes, Henry L. Stone, and Anthony Gilkison
vs.
ORVILLE N. ADAMS and KNEELAND T. Adams.
} Cognovit.

Now come the plaintiffs, by their attorney, who files their declaration against the defendants; and now come also the defendants, by

their attorney, who files their warrant under the defendants' hands and seals, which is adjudged sufficient by the court, and who also file their cognovit, in which they acknowledge themselves to owe and be indebted to the plaintiffs in the sum of four thousand one hundred and seventy-one dollars and ninety-five cents, and they confess a judgment for that amount. It is thereupon considered and adjudged by
150 the court that the plaintiffs have and recover of and from the said defendants the said sum of four thousand one hundred and seventy-one dollars and ninety-five cents, their damages so as aforesaid confessed, together with their costs by them in this behalf expended, amounting to the sum of twenty-one dollars and seventy-five cents, and that they have execution therefor; and *and* on application of the plaintiffs, by their attorneys, it is ordered by the court that execution issue instanter herein.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you again that of the goods and chattels, lands and tenements of Orville N. Adams and Kneeland T. Adams, in your district, you cause to be made forty-one hundred and ninety-three dollars and seventy cents, which Henry C. Bowen, Theodore McNamee, Samuel P. Holmes, Henry L. Stone, and Anthony Gilkison lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against them for damages which they had sustained as well by occasion of the non-performance of certain promises and undertak-
151 ings as for their costs and charges by them about their suit in this behalf expended, whereof said defendants are convicted, as appears to us of record; and have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiffs for their damages aforesaid, and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Indorsed: No. 895, circuit court United States, northern district of Illinois. Bowen, McNamee & Co. *vs.* Orville N. Adams and Kneeland T. Adams—

Alias fi. fa. damages	$4,171 95
Costs	21 75
Collect	4,193 70
Alias fi. fa	1 35
	4,195 25

Judgment rendered July 15th, 1856.

WM. H. BRADLEY, *Clerk.*

This execution came to hand at 4 o'clock p. m., this 15th day of July, 1857.

IRAM NYE, *U. S. Marshal,*
By E. A. BENNETT, *Dep't.*

152 By virtue of the within execution, I have this day levied on all the right, title, and interest of O. N. and K. T. Adams in and to the following described real estate, to satisfy the same, a description of which is hereunto attached and marked A:

A. The east 20 feet of lot 12, in block 120, in the city of La Salle, county of La Salle and State of Illinois; also, 10 acres of land in the southwest corner of the northeast quarter of section ten, township 33 north, range 1 east of the 3d principal meridian, being the same land deeded to him by Harriet Brown; also, the undivided one-fourth of the south half of section 29, township 34 north, range 1 east; also, the northeast quarter of section 31, township 34 north, range 1 east; also, the northwest quarter of section 28, township 34 north, range 1 east; also, southwest quarter of section 29, same town and range; also, the northeast quarter of the northeast quarter of section 27, township 33 north, range 1 east; also, the southeast quarter of section 24, township 33 north, range 1 east; also, the east half of the northwest quarter of section 19, township 33 north, range 2 east of the 3d principal meridian; also, all that part of the N. west quarter of section 23, in township 33 north, range 1, east of the 3d principal meridian, which lies on the west side of the Illinois Central Railroad, and on the south
153 side of the Illinois river; also, the southwest quarter of section 23, same town and range; also, southeast quarter of section 22, in same town, and range—all situated in the county of La Salle and State of Illinois, this 15th day of July, 1857.

IRAM NYE,
U. S. Marshal, Nor. D't Ill.

After giving notice as the law requires, I did on this 25th day of August, 1857, offer the within named property for sale, at the court-house door, in the town of Ottawa, county of La Salle, and State of Illinois, and James M. Walker, as trustee for plaintiffs in 3 executions which are satisfied by this sale, having bid for each tract the amount below set forth, and they being the highest and best bids made, the same was struck down and sold to him at the following prices, to wit:

The first named tract, east twenty feet of lot twelve (12,) block one hundred and twenty, for twenty-one hundred dollars	$2,100
For 2d named tract of 10 acres, one thousand dollars	1,000
For 3d named tract. No bid.	
For 4th named tract. No bid.	
For 5th named tract, NW. qr. of 28, 34 N., 1. E., two thousand dollars	2,000
For 6th named tract. No bid.	
For 7th named tract, NE. of NE. qr. of 27, 33 N., 1 E., two thousand dollars	2,000

For 8th named tract. No bid.	
For 9th named tract. No bid.	
For 10th named tract, part NW. qr. of 23, 33 N., 1 E., one thousand dollars	$1,000
154 For 11th named tract, SW. qr. of 23, 33 N., 1 E., one thousand dollars	1,000
For 12th named tract, SE. qr. of 23, 22 N., 1 E., nine hundred and sixty dollars	960
Making in all ten thousand and sixty dollars	10,060

Therefore this execution is returned satisfied in full, and applied the balance on executions No. 896 and 897.

IRAM NYE,
Late U. S. Marshal Nor. Dt. Ill.

Indorsed: Filed June 14th, 1858.

WM. H. BRADLEY, *Clk.*

3d. Judgment in said court in the case of Dennis Perkins against Orville N. Adams and Kneeland T. Adams, and the alias writ of fieri facias issued thereon, and the return of the same; which said judgment, writ, and return are in the words and figures following, to wit:

Circuit court of the United States for the northern district of Illinois.

THURSDAY, *July 24th, A. D.* 1856.

Present: The Hon. Thomas Drummond, judge.

DENNIS PERKINS
vs.
ORVILLE N. ADAMS, KNEELAND T. ADAMS. } Cognovit.

Now come the parties, by their attorneys, and the plaintiff,
155 by his attorney, files his declaration against the defendants, and the defendants, by their attorney, file their cognovit and the warrant of attorney under the defendants' hands and seals, which is adjudged sufficient by the court, and in which they acknowledge themselves to owe and be indebted to the plaintiff in the sum of eleven hundred and fifty-six dollars and seventy-one cents in said warrant and cognovit mentioned, and by their attorney they confess a judgment in favor of the plaintiff for that amount. It is thereupon considered and adjudged by the court that the plaintiff have and recover of and from the defendants the said sum of eleven hundred and fifty-six dollars and seventy-one cents, their damages as aforesaid confessed, together with his costs by him in this behalf expended, amounting to the sum of dollars and cents, and that he have a writ of execution therefor.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you again that of the goods and chattels, lands and tenements, of Orville N. Adams and Kneeland T. Adams in your district you cause to be made eleven hundred and seventy-four
156 dollars and sixty-one cents, which Dennis Perkins lately, in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against them for damages which he had sustained as well by occasion of the non-performance of certain promises and undertakings as for his costs and charges by him about his suit in this behalf expended, whereof said defendants are convicted, as appears to us of record; and have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiff for his damages aforesaid, and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Indorsed: No. 897. Circuit court United States, northern district of Illinois. Dennis Perkins *vs.* Orville N. Adams and Kneeland T. Adams. Alias fi. fa.

157	Damages	$1,156 71
	Costs	17 90
	Collect	1,174 61
	Def's fee bill	50
	Alias fi. fa	1 35
		1,176 46

Judgment rendered July 24th, 1856.

WM. H. BRADLEY, *Clerk.*

This execution came to hand at 4 o'clock p. m. this 15th day of July, 1857.

IRAM NYE, *U. S. Marshal,*
By E. A. BENNETT, *Deputy.*

By virtue of the within execution I have this day levied on all the right, title, and interest of O. N. and K. T. Adams in and to the following described real estate to satisfy the same, to wit: 1st. The east 20 feet of lot 12, in block 120, in the city of La Salle, county of Lasalle and State of Illinois. 2d. Also 10 acres of land in the southwest corner of the northeast quarter of section 10, township 33 north,

range 1 east of the 3d principal meridian, being the same land deeded to him by Harriet Brown. 3d. Also the undivided one-fourth of the south half of section 29, township 34 north, range 1 east. 4th. Also the northeast quarter of section 31, town. 34 north, range 1
158 east. 5th. Also the northwest quarter of section 28, town. 34 north, range 1 east. 6th. Also the southwest quarter of section 29, same town. and range. 7th. Also the northeast quarter of the northeast quarter of section 27, town. 33 north, range 1 east. 8th. Also the southeast quarter of section 24, town. 33 north, range 1 east. 9th. Also the east half of the northwest quarter of section 19, town. 33 north, range 2 east of the 3d principal meridian. 10th. Also all that part of the northwest quarter of section 23, town. 33 north, range 1 east of the 3d principal meridian, which lies on the west side of the Illinois Central railroad and on the south side of the Illinois river. 11th. Also the southwest quarter of section 23, same township and range. 12th. Also the southeast quarter of section 22, in same town. and range: All situate in the county of La Salle, and State of Illinois, this 15th day of July, 1857.

IRAM NYE,
U: S. Marshal, Nor. Dt. Ill.

After giving notice as the law requires, I did, on the 25th day of August, 1857, offer the within named property for sale, at the court-house door, in the town of Ottawa, county of La Salle, and State
159 of Illinois, and James M. Walker, as trustee for the plaintiffs in 3 executions, which are satisfied by this sale, having bid for each tract the amount below set forth, and they being the highest and best bids made, the same was struck down and sold to him at the following prices, to wit:

For the 1st named tract, the east twenty feet of lot 12 in block 120, twenty-one hundred dollars	$2,100
For the 2d named tract of 10 acres, one thousand dollars	1,000
For the 3d named tract. No bid.	
For the 4th named tract. No bid.	
For the 5th named tract, NW. ¼ sect. 28, T. 34 N., R. 1 E., two thousand dollars	2,000
For the 6th named tract. No bid.	
For the 7th named tract, NE. ¼ NE. ¼ sect. 27, T. 33 N., R. 1 E., two thousand dollars	2,000
For the 8th named tract. No bid.	
For the 9th named tract. No bid.	
For the 10th named tract, part NW. ¼ sec. 23, T. 33 N., R. 1 E., one thousand dollars	1,000
For the 11th named tract, SW. ¼ sec. 23, T. 33 N., R. 1 E., one thousand dollars	1,000
For the 12th named tract, SE. ¼ sec. 22, T. 33 N., R. 1 E., nine hundred and sixty dollars	960
Making in all ten thousand and sixty dollars	10,060

Therefore this execution is returned satisfied in full, and bal. of proceeds applied on executions Nos. 895 and 896.

IRAM NYE,
Late U. S. Marshal, Nor. Dt. Ill.

Indorsed: Filed June 14th, 1858.

WM. H. BRADLEY, *Clerk.*

160 4th. The defendants offered in evidence the certificate of purchase in said entitled causes; which said certificate of purchase is in words and figures following, to wit:

Marshal's certificate—Executions No. 895, 896, 897.

UNITED STATES OF AMERICA, *Northern district of Illinois, sct:*

BOWEN, MCNAMEE & CO.
vs.
ORVILLE N. ADAMS, KNEELAND T. ADAMS.

LYCURGUS EDGERTON *et al.*
vs.
ORVILLE N. ADAMS, KNEELAND T. ADAMS.

DENNIS PERKINS
vs.
ORVILLE N. ADAMS, KNEELAND T. ADAMS.

Amount of judgment:

For damages	$9,060 99
For costs	65 95
Amount total	9,126 94

This will certify that by virtue of three executions in the above-entitled causes, issued out of the United States circuit court,
161 bearing date the 15th day of July, 1857, upon a judgment rendered at the July term, 1856, I have levied upon the following described real estate, to wit: 1st. The E. 20 feet of lot 12, in B. 120, city of La Salle, county of La Salle, and State of Illinois; also, 2d, 10 acres of land in the SW. corner of the NE. ¼ sec. 10, T. 33 N., R. 1 E., being the same land deeded to him by Harriet Brown; also, 3d, the und. ¼ of the S. ½ sec. 29, T. 34 N., R. 1 E.; also, 4th, the NE. ¼ sec. 31, T. 34 N., R. 1 E.; also, 5th, the NW. ¼ sec. 28, T. 34 N., R. 1 E.; also, 6th, the SW. ¼ sec. 29, T. 34 N., R. 1 E.; also, 7th, the NE. NE. ¼ sec. 27, T. 33 N., R. 1 E.; also, 8th, the SE. ¼ sec. 24, T. 33 N., R. 1 E.; also, 9th, the E. ½ NW. ¼ sec. 19, T. 33 N., R. 2 E.; also, 10th, all that part of the NW. ¼ sec. 23, T. 33 N., R. 1 E.; which lies on the west side of the Illinois Central railroad, and south side of the Illinois river; also, 11th, the SW. ¼ sec. 23, T. 33 N., R. 1 E.; also, 12th, the SE. ¼ sec. 22, T. 33 N., R. 1 E., all of the 3d principal meridian, and situated in the county of La Salle and State of Illinois, as the property of the said defendants,

and that I proceeded to advertise the same for sale by posting up advertisements in three of the most public places in the county, and publishing the same in the Ottawa Free Trader, published at Ottawa, in said county, twenty days previous to the day of sale, stating
162 that I should proceed to sell the same at the court-house door, in the town of Ottawa, on the 25th day of August, 1857, between the hours of 9 o'clock a. m. and sunset of said day, to the highest and best bidder, for cash, to satisfy said execution. And at the time and place mentioned I proceeded to sell said property for cash, and that James M. Walker, as trustee for the plaintiffs in the above executions, being the highest and best bidder, became the purchaser thereof, at the following prices, to wit:

For the 1st named tract, the sum of twenty-one hundred dollars	$2,100 00
For the 2d named tract, the sum of one thousand dollars.	1 000 00
For the 5th named tract, the sum of two thousand dollars.	2,000 00
For the 7th named tract, the sum of two thousand dollars.	2,000 00
For the 10th named tract, the sum of one thousand dollars.	1,000 00
For the 12th named tract the sum of nine hundred and sixty dollars	960 00
Making in all the sum of ten thousand and sixty dollars	10,060 00

And that the said James M. Walker, as trustee as above mentioned, will be entitled to a deed for the same after the expiration of fifteen months from the date hereof, unless it shall be redeemed according to law.

Given under my hand this twenty-fifth day of August, 1857.

$10,060. IRAM NYE,

Late U. S. Marshal Northern District of Illinois.

Indorsed: Filed June 14th, 1858.

WM. H. BRADLEY, *Cl'k.*

163 5th. The petition of J. M. Walker for a deed; which said petition is in words and figures following, to wit:

To the honorable the judge of the district court for the northern district of Illinois:

Your petitioner, James M. Walker, as trustee, represents unto your honor that in the July term of this court, A. D. 1856, a judgment was rendered in favor of Bowen, McNamee & Co. against Orville N. Adams and Kneeland T. Adams; also in favor of Lycurgus Edgerton *et al.* against the same parties; also in favor of Dennis Perkins against the same parties; that executions issued upon said judgments and were levied upon the following lands: No. 1, the E. 20 feet of lot 12, in B. 120, city of La Salle, county of La Salle, and State of Illinois; also, No. 2, 10 acres of land in the SW. corner of the NE. ¼ sec. 10, T. 33 N., R. 1 E., being the same land deeded to him by Harriet Brown; also, No. 5, the NW. ¼ sec. 28, T. 34 N., R. 1 E.; also, No. 7, the NE. NE. ¼ sec. 27, T. 33 N., R. 1 E.; also, No.

10, all that part of the NW. ¼ sec 23, (twenty-three) T. 33 N., R. 1 E., which lies on the W. side of the Illinois Central railroad
164 and south side of the Illinois river; also, No. 11, the SW. ¼ sec. 23, T. 33 N., R. 1 E.; also, No. 12, the SE. ¼ sec. 22 T. 33 N. R., 1 E., all of the 3d principal meridian, and situated in the county of La Salle and State of Illinois, as the property of said Orville N. Adams and Kneeland T. Adams; that said lands and lots were duly advertised, and on the 25th day of August, 1857, were exposed to sale and sold by the United States marshal of the northern district of Illinois to your petitioner, he being the highest and best bidder therefor, for the sum in the aggregate of ten thousand and sixty dollars, and that the said tracts were sold separately; that said lands and lots have not been since redeemed by said Orville N. Adams and Kneeland T. Adams, or either of them, or by any other person; and that your petitioner is now entitled to a deed of the same, and he files herewith the certificate of purchase as a part of this petition; that the parties interested in said judgments and execution have made a division of their interest in said lands and lot so bid off, according to the assignment on the back of said certificate.

Wherefore he prays that a deed may be made to him by the
165 United States marshal for the northern district of Illinois, according to the said certificate and the assignment thereon, which would be as follows: Parcels No. 1, 2, and 5 to Ezekiel S. Smith, in trust for Henry E. Bowen, Theodore McNamee, Samuel P. Holmes, Henry L. Stone, Anthony Gilkerson, and Dennis Perkins; parcels No. 7, 10, 11, and 12 to James M. Walker, in trust for L. Edgerton and others. And as in duty bound, &c.

JAMES M. WALKER,
By WALKER, VAN ARMAN & DEXTER.

Indorsed: Filed Dec'b. 4th, 1858.

WM. H. BRADLEY, *Cl'k.*

6th. The order of said court for marshal to make deeds; which said order, as appears from the record of the proceedings of said court, is as follows, to wit:

Circuit court of the United States for the northern district of Illinois.

SATURDAY, *December 4th*, 1858.

Present, the Hon. Thomas Drummond, judge.

In the matter of the petition of James M. Walker for marshal's deeds

166 This day comes the petitioner James M. Walker by Messrs. Walker, Van Arman & Dexter, his attorneys, and files his petition, together with a certified copy of a certificate of purchase, made by Iram Nye, late marshal for the northern district of Illinois, for the real estate and premises described in said certificate, and hereinafter set forth; and it appearing from said petition that under and by virtue of three executions, issued upon the fifteenth day of July, A. D. 1857, upon three certain judgments rendered at the July term, A. D.

1856, of the circuit court of the United States for the northern district of Illinois—one in favor of Bowen, McNamee & Co.; one in favor of Lycurgus Edgerton *et al.* and one in favor of Dennis Perkins, and all against Orville N. Adams and Kneeland T. Adams—the following described real estate and premises were levied upon by the said marshal, to wit: (1st.) The E. 20 feet of lot 12, in B. 120, city of La Salle, county of La Salle and State of Illinois; also, (2d) 10 acres of land in the SW. corner of the NE. $\frac{1}{4}$, sec. 10, T. 33 N., R. 1 E., being the
167 same land deeded to him by Harriet Brown; also, (3d) the und. $\frac{1}{2}$ of the S. $\frac{1}{2}$, sec. 29, T. 34 N., R. 1 E.; also, (4th) the NE. $\frac{1}{4}$. sec. 31, T. 34 N., R. 1 E; also, (5th) the NW. $\frac{1}{4}$ sec. 28, T. 34 N., R. 1 E.; also (6th) the SW. $\frac{1}{4}$, sec. 29, T. 34 N., R. 1 E.; also, (7th) the NE. NE. $\frac{1}{4}$, sec. 27, T. 33 N., R. 1 E.; also, (8th) the SE. $\frac{1}{4}$, sec. 24 T. 33 N., R. 1 E.; also, (9th) the E. $\frac{1}{2}$ NW. $\frac{1}{4}$. sec. 19, T. 33 N, R. 2 E.; also, (10th) all that part of the NW. $\frac{1}{4}$, sec. 23 T. 33 N., R. 1 E., which lies on the west side of the Illinois Central railroad and south side of the Illinois river; also, (11th) the SW. $\frac{1}{4}$, sec. 23, T. 33 N., R. 1 E.; also, (12th) the SE. $\frac{1}{4}$, sec. 22, T. 33 N., R. 1 E., all of the 3d principal meridian, and situated in the county of La Salle and State of Illinois; and that the parcels 1st, 2d, 5th, 7th, 10th, 11th, and 12th of said described real estate and premises were sold by the said marshal on the twenty-fifth day of August, A. D. 1857, and at said sale the said petitioner, James M. Walker, as trustee for the plaintiffs in the said executions, became the purchaser of the same.

And it further appearing from said petition that the parties interested in said judgments and executions have made a division of their interest in said lands and lots so sold, as will appear from the assignment indorsed upon said certificate of purchase filed with said petition. And it further appearing that none of the foregoing described real estate and premises have been redeemed from said sale.
168 And it further appearing that said marshal or his successors have not made to said petitioner any deed for any of said described real estate, and premises. And said petitioner praying that deeds may be executed by Charles N. Pine, the present marshal of this district, for said described real estate and premises in accordance with said certificate and assignment as follows, to wit: To Ezekiel S. Smith, in trust for Henry C. Bowen, Theodore McNamee, Samuel P. Holmes, Henry L. Stone, Anthony Gilkison, and Dennis Perkins for parcels number one, two, and five of said described real estate and premises. And to the said petitioner, James M. Walker, in trust for Lycurgus Edgerton and others, for parcels number seven, ten, eleven, and twelve of said described real estate and premises:

It is thereupon considered and adjudged by the court that Charles N. Pine, the present marshal of this district, do make, execute, and deliver to the said James M. Walker and Ezekiel S. Smith respectively, in trust as aforesaid, deeds for the respective parcels of said described real estate and premises to which they are entitled as above set forth.

7th. Copy of a deed from the marshal to said Walker in compliance

with the foregoing order; which said deed is in the words and
169 figures following, to wit:

Know all men by these presents that, whereas at the July term of the circuit court of the United States of America for the northern district of Illinois, in the year of our Lord one thousand eight hundred and fifty-six, Bowen, McNamee & Co., Lycurgus Edgerton *et al.* and Dennis Perkins, by the consideration and judgment of said court, did recover three certain judgments against Orville N. Adams and Kneeland T. Adams for the sum of nine thousand and sixty dollars and ninety-nine cents and costs of suit; upon which judgments, writs of execution were issued, dated on the fifteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, directed to the marshal of the district of Illinois to execute in due form of law; and by virtue of said executions, Iram Nye, the then marshal of the United States for the northern district of Illinois, after the delivery of the same to him, and before the return day thereof, levied upon the land hereinafter described, and afterwards, to wit; on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, at the town of Ottawa, in La Salle county, and at the court-house door in said town of Ottawa, in the State of Il-
170 linois aforesaid, exposed the said lands (or town lots) for sale at public vendue, and the same were struck off and sold to James M. Walker, as trustee for the plaintiffs, for the sums respectively attached to each tract or town lot, he being the highest and best bidder therefor—the time and place of sale thereof having been by me first duly advertised according to law. And whereas at the October term of said circuit court, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, it was ordered and considered by said court that I, Charles N. Pine, present marshal of this district, should make, execute, and deliver to the said James M. Walker and to Ezekiel Smith respectively, in trust, deeds for the respective parcels of land described in said order:

Now, therefore, know all men by these presents, and by virtue of the premises herein afterwards described, I, Charles N. Pine, marshal for the northern district of Illinois, in consideration of the premises herein stated, have granted, bargained, and sold, and do hereby bargain and convey to the said James M. Walker, in trust for Lycurgus Edgerton and others, the following described tracts or parcels of land or town lots or lot, for the sums respectively attached to each,
171 to wit; the northeast northeast quarter of section twenty-seven, in township thirty-three north, range one east, for the sum of two thousand dollars; all that part of the part of the northwest quarter of section twenty-three, in township thirty-three, range one east, which lies on the west side of the Illinois Central Railroad and south side of the Illinois river for the sum of one thousand dollars; also, the southwest quarter of section twenty-three, in township thirty-three north, range one east, for the sum of one thousand dollars; also, the southeast quarter of section twenty-two, in township thirty-three north, range one east, all of the third principal meridian, for the sum of nine hundred and sixty dollars, and all of

said parcels of land being situated in the county of La Salle and State of Illinois, and amounting in all to the sum of four thousand nine hundred and sixty dollars. To have and hold the said premises, with all the appurtenances thereunto belonging, to the said James M. Walker, in trust as aforesaid, and to his heirs and assigns forever.

Witness my hand and seal this eighth day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

172 CHARLES N. PINE, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

I, William H. Bradley, clerk of the United States circuit court in and for the northern district of Illinois aforesaid, do hereby certify that on this day Charles N. Pine, U. S. marshal in and for said northern district, appeared before me and acknowledged that he executed and delivered the foregoing deed of conveyance as such marshal, for the uses and purposes therein set forth and for none others, he, the said Charles N. Pine, marshal, being well known to me to be the person who signed, sealed, and delivered said deed aforesaid.

In witness whereof, I have hereunto set my hand and affixed the seal of the circuit court thereto, this fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL] WM. H. BRADLEY, *Clerk.*

$5. Received of Jas. M. Walker, five dollars, Jan'y 15th, 1859, for executing this deed.

C. N. PINE, *U. S. M.*,
Per D. B. MARTIN.

173 Filed January 17th, 1859, at 9½ o'c. a. m.

STATE OF ILLINOIS, *La Salle county, ss:*

I, Absalom B. Moore, clerk of the circuit court and ex officio recorder of deeds, &c.. in and for said county, do hereby certify that the foregoing is a true and perfect copy of a deed from Charles N. Pine, U. S. marshal of the northern district of Illinois, to James M. Walker, as appears of record in my office in Book No. 65 of Deeds, &c., pages 97 and 98.

In witness whereof, I have hereunto set my hand and the seal of said court, at Ottawa, in said county, this 18th day of November, A. D. 1863.

[SEAL.] A. B. MOORE, *Clerk.*
[5 ct. U. S. rev. stamp, cancelled.]

Indorsed: Filed Dec. 1, 1863.

WM. H. BRADLEY, *Cl'k.*

8th. Certified copy of deed from James M. Walker and wife to Lycurgus Edgerton, which is in the words and figures following, to wit:

This indenture, made this first day of May, in the year of our Lord

one thousand eight hundred and sixty, (A. D. 1860,) between
174 James M. Walker and Elia M., his wife, of the city of Chicago, in the county of Cook and State of Illinois, of the first part, and Lycurgus Edgerton, of the city of New York, in the county and State of New York, of the second part, witnesseth, that the said parties of the first part, in consideration of four thousand nine hundred and sixty dollars ($4,960) in hand paid by said party of the second part, the receipt whereof hereby acknowledged, by these presents, do release, alien, convey, and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following pieces of land, situated in the county of La Salle and State of Illinois, described as follows, to wit: The northeast quarter of the northeast quarter of section twenty-seven, in township thirty-three north, range one east; all that part of the of the part of thenorthwest quarter of section twenty-three, in township thirty-three, range one east, which lies on the west side of the Illinois Central railroad and south side of the Illinois river; also the southwest quarter of section twenty-three, in township thirty-three north, range one east; also the southeast quarter of section
175 twenty-two, in township thirty-three north, range one east—all of the third principal meridian. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

JAMES M. WALKER. [SEAL.]
ELIA M. WALKER. [SEAL.]

Signed, sealed, and delivered in presence of.

STATE OF ILLINOIS, *Cook county, city of Chicago, ss:*

I, John Thorne Clarkson, a notary public in and for the said city of Chicago, in the county and State aforesaid, do hereby certify that James M. Walker and Elia M. Walker, personally known to me as the same persons whose names are subscribed to the foregoing
176 deed, appeared before me this day in person, and acknowledged that they executed delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth; and the said Elia M. Walker, wife of the said James M. Walker, having been by me examined, separate and apart and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this eleventh day of May, A. D. 1860.

[SEAL.] JNO. THORNE CLARKSON,
Notary Public.

Filed July 12, 1860, at 2½ o'c. p. m.

STATE OF ILLINOIS, *La Salle county, ss:*

I, Absolam B. Moore, clerk of the circuit court and ex officio recorder of deeds, &c., in and for said county, do hereby certify that the foregoing is a true and perfect copy of a deed from James M.
177 Walker and Elia M. Walker to Lycurgus Edgerton, as appears of record in my office, in Book No. 73 of Deeds, &c., pages 299 and 300.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Ottawa, in said county, this eighteenth day of November, A. D. 1863.

[SEAL.] A. B. MOORE, *Clerk.*

[5 ct. rev. stamp cancelled]

Indorsed: Filed Dec. 1, 1863.

WM. H. BRADLEY, *Cl'k.*

9th. A deed from Joshua Cushing and wife to Orville N. Adams; which said deed is in words and figures following, to wit:

This indenture, made this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-six, between Joshua Cushing and Sarah P. Cushing, his wife, of the county of La Salle and State of Illinois, party of the first part, and Orville N. Adams, of the county of La Salle, in the State of Illinois, parties of the second part, witnesses, that the said party of the first part, for and in consideration of the sum of five thousand dollars paid by the said party of the second part, the receipt whereof is hereby ac-
178 knowledged, does by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following described tract or parcel of land situated in the county of La Salle and State of Illinois, viz, to wit: Commencing on the south line of section twenty-two, (22,) township thirty-three (33,) north, range one (1) east of the third principal meridian, at a point forty-six (46) rods east of the middle line of said section, and running due west on said line of said section, and running due west on said line thirty-three (33) rods, and thence due north to the Illinois river; thence an easterly course along said river to a point on said river due north from the place of beginning; thence due south to the place of beginning, containing eight acres, be the same more or less, (less a strip one hundred feet wide on the west end of said lot;) also the west half of the east half of the southwest quarter of section No. twenty-three, (23,) excepting such interest in said land as has been heretofore granted and sold to the Illinois Central Railroad Company by said party of the first part; also the west half of the southwest quar-

ter of the southwest quarter of section twenty-three, both in township thirty-three north, of range one east of the third prin-
179 cipal meridian, sixty acres more or less, (excepting and reserving the lot fifty (50) feet wide running from the street to the river, heretofore sold by the party of the first part to Charles Todd & Bro.;) together with all and singular the hereditaments and appurtenances therento belonging or in anywise appertaining. To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Joshua Cushing, for himself, his heirs, executors, and administrators, does hereby covenant to and with the said party of the second part, his heirs and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and has good right to sell and convey the same in manner and form as aforesaid; that they are free from all incnmbrance, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against
180 the claim of all persons whomsoever he will forever warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSHUA CUSHING. [L. S.]
SARAH P. CUSHING. [L. S.]

Signed, sealed, and delivered in presence of.

STATE OF ILLINOIS, *La Salle county, town of La Salle, ss:*

On this twenty-seventh day of November, 1856, personally appeared before me, a notary public in and for said town in said county, Joshua Cushing, to me personally known to be the person whose name is subscribed to the above deed as having executed the same, and acknowledged that he had freely executed the same for the purposes therein expressed.

And Sarah P. Cushing, wife of the said Joshua Cushing, to me personally known to be the person whose name is subscribed to the same deed, also appeared before me and was by me made acquainted with the contents of the same, and examined separate and apart from her said husband, whether she executed the said deed and relinquished her dower in the lands and tenements therein mentioned, vol-
181 untarily, freely, and without compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower in the lands and tenements therein mentioned, voluntarily and freely, and without the compulsion of her said husband.

Given under my hand and seal notarial the day and year aforesaid.

[SEAL.] E. FOLLETT BULL, *Notary Public.*

1214.

STATE OF ILLINOIS, *La Salle county:*

I hereby certify that this deed was filed for record April 4, 1857, at 5 o'clock p. m., and duly recorded in book 52, page 683.

J. F. NASH, *Clerk.*

10th. A bond from Orville N. Adams to James Strain; a copy of which bond or agreement is attached to the answer of said Orville N. Adams herein, marked Exhibit C, and is correctly copied on pages 68 to 79, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*

11th. A deed from Chauncey K. Adams to James Strain;
182 which said deed is attached to the answer of Orville N. Adams, herein, and therein marked Exhibit B, and is correctly copied on pages 65 to 68, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*

12th. A copy of a deed from James Strain and wife to Archibald Young; which said copy of said deed is attached to the answer of Orville N. Adams herein, marked Exhibit D, and is correctly copied on pages 70 to 73, inclusive, of this transcript.

WM. W. BRADLEY, *Clerk.*

183 On this day, to wit, the 25th day of July, A. D. 1865, came said complainants by their solicitor, and filed in said clerk's office their appeal bond in said cause; which said bond is in words and figures following, to wit:

Know all men by these presents, that we, Ezekiel S. Smith and John R. Parsons, are held and firmly bound unto Joshua Cushing, Sarah P. Cushing, and Orville N. Adams, in the sum of five hundred dollars, to be paid to the said Joshua Cushing, Sarah D. Cushing, and Orville N. Adams, their executors and administrators; to the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated this 21st day of July, A. D. 1865. Provided, however, that this obligation is upon this express condition, that whereas Archibald Young and Elbert Van Kleck have prayed an appeal to the Supreme Court of the United States to reverse a decree rendered by the circuit court of the United States for the eighth circuit and northern district of Illinois, in a certain cause on the chancery side of said circuit court, wherein Archibald Young and Elbert H. Van Kleck are complainants, and said Joshua Cushing, Sarah P. Cushing, and Orville N. Adams are defendants, in favor of said defendants:

184 Now, therefore, the condition of this obligation is such, that if the above-named complainants shall prosecute their said appeal

and writ of error to effect, and shall pay all costs if they shall fail to make good their said plea, then this obligation to be void; otherwise, to remain in full force and virtue.

EZEKIEL S. SMITH. [SEAL.]
J. R. PARSONS. [SEAL.]

Approved. THOMAS DRUMMOND.

Indorsed: Filed July 25th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 14th day of November, A. D. 1865, the solicitors in said entitled cause filed in said clerk's office their agreement in said entitled cause; which said agreement is in words and figures following, to wit:

U. S. cir. court.

ARCHIBALD YOUNG *et al.*
vs.
JOSHUA CUSHING *et al.*

This cause was tried before the judge without a jury, and it was understood and agreed between the parties at the time of trial that all testimony on both sides should be adduced and read, and was considered as adduced and read, subject to any legal objection
185 there might be to the same; all the legal objections that might have been made by either party to testimony introduced by the other were to be considered by the court as having been made at the time of the introduction of the evidence; but when the proofs were respectively offered, the attention of the court was not called to any special objections made to the proofs at the time.

WALKER & DEXTER,
SMITH HART & CLYDE,
Sol'rs for Compl'ts of record.
E. S. SMITH.

Indorsed: Filed Nov. 14th, 1865.

WM. H. BRADLEY, *Cl'k.*

186 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the foregoing, from pages one to one hundred and eighty-four, to be a true and complete transcript of the record of all the proceedings which have been had in the cause in said court wherein Archibald Young and Elbert H. Van Kleeck are the complainants, and Joshua Cushing, Sarah P. Cushing, and Orville N. Adams are the defendants, as appears from the records of said court remaining in my custody, and that the citation issued to the appellees herein is appended to this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this fifteenth day of November, A. D. 1865.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

187 Supreme Court of the United States of America.—December term, 1865.

ARCHIBALD YOUNG, ELBERT H. VAN KLEECK, appellants,
vs.
JOSHUA CUSHING, SARAH P. CUSHING, Orville N. Adams.

Appeal from the circuit court of the United States for the northern district of Illinois.

Assignment of errors.

1st. The court erred in refusing to appoint a trustee with authority to make sale of the trust property.

2d. The court erred in granting a decree dismissing the bill.

3d. The court erred in refusing to grant a decree for the appellants as prayed in their bill of complaint.

E. S. SMITH,
Sol'r for Appellants.

Filed December 4, 1865.

Record filed in the Supreme Court December 4, 1865.

IN THE SUPREME COURT OF THE UNITED STATES.

No. [illegible]

[illegible] CO. AND E. MARETTE
[illegible] COLLECTOR, APPELLANTS,

v.

[illegible] STATES.

[illegible] THE UNITED STATES FOR THE
[illegible]

[illegible] OF ERROR.